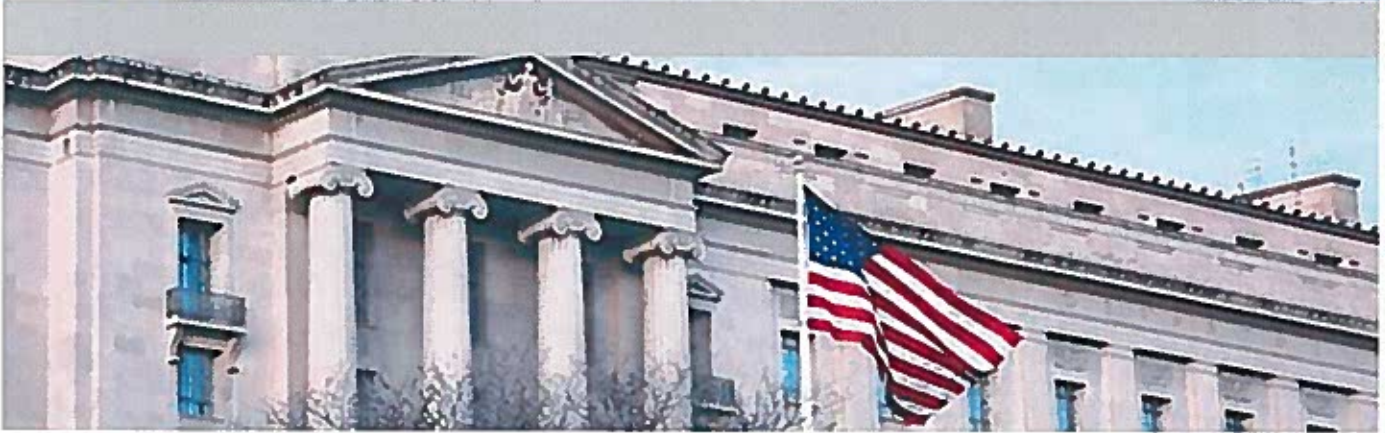




Office of the Inspector General
U.S. Department of Justice



REDACTED

A Review of Investigations of the Osorio and Barba Firearms Trafficking Rings

EXECUTIVE SUMMARY

In this review the OIG examined information that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and Department of Justice (DOJ) obtained about the traffickers of two firearms that were used in an attack on Immigration and Customs Enforcement (ICE) agents in Mexico that resulted in the death of one agent and the serious injury of another. We focused our review on whether ATF agents improperly failed to seize firearms destined for Mexico, or to timely investigate and arrest subjects who were involved in the trafficking of such firearms. With the exception below, we did not find a general failure to seize firearms where there was a legal basis and opportunity to do so, though we did find consistent with our prior reviews that DEA still needs to improve its policies to ensure appropriate coordination with ATF in drug investigations where firearms trafficking may be involved.

On February 15, 2011, ICE Agents Victor Avila and Jaime Zapata were driving on a highway near the town of Santa Maria del Rio, approximately 200 miles north of Mexico City, when members of the Los Zetas (Zetas) drug trafficking organization opened fire on their vehicle. Agent Zapata died from his injuries and Agent Avila was seriously wounded. On February 23, 2011, the Mexican military arrested several Zeta members and associates in connection with the Zapata/Avila shooting and seized six firearms. Traces of these firearms showed that Otilio Osorio had purchased one of the firearms (Osorio Firearm) on October 10, 2010 at the Dallas-Fort Worth Gun Show, and that Robert Riendfliesh had purchased another of the firearms (Riendfliesh Firearm), on August 20, 2010 at a pawn shop in Beaumont, Texas. ATF's comparison of cartridge casings and the statements of Zeta members linked both weapons to the Zapata/Avila shooting scene. Osorio and Riendfliesh were arrested along with Osorio's brother, Ranferi, and a neighbor, Kelvin Morrison, shortly after ATF completed traces of the firearms on February 25, 2011.

Our review examined the information that the ATF, DEA, FBI, and DOJ obtained about the Osorios, Morrison, and Riendfliesh prior to the Zetas attack on the ICE agents. We also examined the circumstances surrounding the release of Manuel Barba from federal custody in Beaumont, Texas in July 2010 following his arrest by DEA for narcotics offenses. Barba led a ring of firearms "straw purchasers" (Baytown Crew) and trafficked the Riendfliesh Firearm to Mexico following his release. Our review paid particular attention to the information that was available to the agencies before Osorio and Riendfliesh made their firearms purchases.

With respect to the Osorios and Morrison, ATF began receiving information in June 2010 indicating that Ranferi Osorio could be trafficking firearms to Mexico, and by September had obtained information implicating Morrison as well. Our review did not identify circumstances where agents witnessed the unlawful transfer of firearms and failed to seize them. We

determined that ATF agents learned of the Osorio brothers' and Morrison's firearms purchases after they occurred and agents therefore were not in a position to seize the firearms as the Osorio brothers and Morrison took custody of them. We identified one instance, however, where we believe ATF had both the legal authority and opportunity to take firearms in the Osorio brothers' possession, yet failed to seize them. This occurred during a search of the Osorios' residence shortly after the Zapata/Avila shooting. Two of the firearms that were not seized subsequently were recovered at a crime scene in Mexico.

Overall we found numerous problems with ATF's assimilation of information concerning the Osorio brothers and Morrison and the timeliness of ATF's response to mounting evidence that they were committing firearms offenses. We determined that ATF's Dallas Field Division had collected sufficient facts prior to Otilio Osorio's purchase of the Osorio Firearm to justify questioning Ranferi Osorio and Morrison or taking other investigative steps within a reasonable time about their firearms purchases. We do not believe that it is possible to identify what investigative steps should have been taken at the time, or precisely when arrests should have occurred, and that to attempt to do so now would be speculative. We do, however, believe that there clearly was probable cause to arrest both Osorio brothers and Morrison after ATF witnessed the Osorios complete a transfer of 40 firearms on November 9, 2010. Yet, ATF's first contact with the Osorios and Morrison did not occur until late February 2011. We did not agree with explanations that ATF offered for this delay.

With respect to the conduct of the firearms trafficking investigations that led to ATF's identification and arrests of Barba and Riendfliesh, we did not identify any actions that agents responsible for these investigations failed to take that might reasonably have had the effect of preventing the trafficking of the Riendfliesh Firearm. We found that ATF agents diligently pursued leads and took effective investigative steps and appropriately consulted and coordinated their activities with the U.S. Attorney's Office for the Southern District of Texas. Our investigation did not identify circumstances where agents witnessed the unlawful transfer of firearms and failed to seize them.

Our review did find serious deficiencies with DEA's handling of the Manuel Barba case. DEA first learned in April 2010 of Barba's drug dealing and in May 2010 of his potential firearms trafficking to Mexico. Yet, DEA never shared this information about Barba's possible gun trafficking with ATF so that ATF could determine what investigation might be appropriate, and ATF only learned of Barba's gun trafficking in August 2010, after the sale of the Riendfliesh Firearm, as a result of a separate ATF investigation. We were not persuaded by DEA's explanations for not passing on evidence of Barba's involvement with firearms trafficking to ATF, and we determined that there is room for improvement in DEA's policy to clearly require such communication in appropriate circumstances. As part of oversight work concerning ATF's Operation Fast and Furious, we previously encouraged DEA to develop policies that provide clear

guidance to its agents about when to contact ATF, but to date DEA has not implemented our suggestions.¹ We further determined that the Assistant U.S. Attorney (AUSA) handling the Barba drug prosecution should not have agreed to Barba's release from federal custody in July 2010 following his indictment and ultimate plea in the Eastern District of Texas, leaving him at liberty to lead the Baytown Crew and ultimately to direct the straw purchase and the trafficking of the Riendfliesh Firearm to Mexico. We found that, prior to his release, the DEA failed to highlight for the AUSA statements Barba had made about trafficking AK-47s, and we found no evidence that the AUSA read the DEA report that recited Barba's statements or take them into account in agreeing to his release.

Our review did not find evidence that the FBI, ATF Headquarters, or DOJ were alerted to or aware of the criminal activities of the Osorios, Morrison, Riendfliesh, or Barba before the Zapata/Avila shooting, or that there were deficiencies regarding the notification process in that regard.

¹ U.S. Department of Justice Office of the Inspector General, *A Review of the Department of Justice's and ATF's Implementation of Recommendations Contained in the OIG's Report on Operations Fast and Furious and Wide Receiver* (February 2016) at 24 (requesting DEA to "establish[] policies that address when to contact ATF about uncontrolled firearms transfers).

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CHAPTER ONE: INTRODUCTION

On February 15, 2011, Immigration and Customs Enforcement (ICE) Agents Victor Avila and Jaime Zapata were returning to Mexico City from Matehuala, Mexico when their armored SUV came under attack near the town of Santa Maria del Rio, approximately 200 miles north of Mexico City. Both agents were on assignment from ICE to duties in Mexico, and their SUV displayed diplomatic license plates. After passing through a toll booth on Mexican Route 57 in the early afternoon, the agents noticed that two vehicles were following them, one of which passed and blocked the agents' SUV from the front, forcing it to stop. Approximately eight assailants approached the SUV armed with various firearms, including assault weapons (AK-47s and AR-15s) and handguns. Two of the assailants were able to gain access to the interior of the SUV through a partially open window and shot Agent Avila in the leg and shot Agent Zapata multiple times. The other assailants also opened fire on the SUV. Both agents later were transported by helicopter to a hospital. Agent Zapata died from his injuries. Agent Avila was seriously wounded but survived.

Numerous Mexican and American agencies responded to the shooting, including the Mexican Federal Police, Mexican Army and Navy, the Mexican Interior Ministry, the Office of the Mexican Attorney General, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Marshals Service, ICE, and the State Department. The U.S. Government established a command center in the Office of the Legal Attaché in Mexico City the day of the shooting, and five investigative teams staffed with agents from various U.S. federal law enforcement agencies were deployed to the area near where the agents were attacked.

U.S. federal agents arrived on the shooting scene the night of February 15 and viewed cartridge casings that Mexican investigators had collected. The crime scene analysis continued the next day and investigators found additional casings and bullet fragments. On February 17, an ATF firearms expert examined 89 casings collected at the scene to assist in determining the source of the ammunition and in identifying the types of firearms used in the assault.

Preliminary intelligence reporting indicated that members of the Los Zetas (Zetas) drug trafficking organization were involved in the attack. According to the DEA's former Chief of Intelligence, Rodney Benson, the Zetas are one of the seven most prominent drug cartels operating in Mexico and are known for extreme brutality in protecting their criminal activities, which include kidnapping, extortion, murder-for-hire, and drug trafficking.²

² Statement of Rodney G. Benson, Assistant Administrator, Chief of Intelligence, Drug Enforcement Administration, before the Western Hemisphere Subcommittee of the Committee on Foreign Affairs, and the Oversight, Investigations, and Management Subcommittee of the Committee on Homeland Security, U.S. House of Representatives, October 4, 2011, 4.

On February 23, 2011, the Mexican military arrested several Zeta members and associates in San Luis Potosi, approximately 20 miles north of Santa Maria del Rio, in connection with the Zapata/Avila shooting and seized six firearms.³ Ammunition consistent with the cartridge casings removed from the shooting scene also was recovered. On February 24, ATF agents and an FBI agent inspected the firearms, of which two had visible serial numbers, two had no visible serial numbers, and the remaining two had obliterated serial numbers. Mexican firearms technicians were able to restore the serial numbers on the obliterated firearms. According to an ATF examination, casings from three of the recovered firearms matched casings found at the shooting scene.⁴ Two of the captured Zeta members also identified four of the firearms as weapons that were used at the Zapata/Avila shooting scene.

An ATF intelligence analyst initiated traces of the seized firearms on February 24 in order to determine their origin. ATF's National Tracing Center completed the traces the following day, which showed that Otilio Osorio had purchased one of the firearms, a Draco 7.62 caliber pistol (Osorio Firearm), on October 10, 2010 at the Dallas-Fort Worth Gun Show, and that Robert Riendfliesh had purchased another of the firearms, a WASR-10 7.62 caliber semi-automatic rifle (Riendfliesh Firearm), on August 20, 2010 at a pawn shop in Beaumont, Texas. ATF's comparison of cartridge casings and the statements of Zeta members linked both weapons to the Zapata/Avila shooting scene. The Criminal Division at the Department of Justice (Department or DOJ) informed the OIG that it was not aware of any forensic analyses of bullets or bullet fragments showing that either the Osorio Firearm or the Riendfliesh Firearm were used to shoot Agents Zapata and Avila. ATF's examination of bullets and bullet fragments collected at the shooting scene concluded that they were too damaged to link them to particular firearms.

ATF staff in Mexico notified ATF Headquarters and the Dallas and Houston Field Divisions of the trace results on February 25. Riendfliesh, who had been indicted on February 8, 2011 for firearms offenses and was scheduled to be arrested the week of February 28, was taken into custody the evening of February 25. The indictment included conspiracy and false statement charges related to his purchase of the Riendfliesh Firearm and other weapons. Manuel Barba, who was indicted on February 8 along with Riendfliesh and who trafficked the Riendfliesh Firearm to Mexico, was arrested on February 16 before ATF obtained the trace results from Mexico. Otilio Osorio was arrested on February 28 for firearms offenses, along with his brother Ranferi Osorio and neighbor

³ Three of these individuals and a fourth who was arrested in April 2011 were extradited to the United States in 2011 and have pled guilty in the U.S. District Court for the District of Columbia to murder and other charges related to agent Zapata's murder and the shooting of agent Avila. They are awaiting sentencing. Three other defendants have been extradited since 2015 and have cases pending in the District of Columbia.

⁴ A laboratory of the Mexican Attorney General's Office also performed comparisons of the cartridge casings fired from the recovered firearms with the casings found at the shooting scene.

Kelvin Morrison. The Osorio brothers and Morrison were indicted on March 23, 2011.

On March 4, 2011, Senator Charles E. Grassley wrote to ATF Acting Director Kenneth Melson with questions about ATF's investigation of the Osorio brothers and Morrison. Senator Grassley sent a second letter to Acting Director Melson on March 28, 2011, in which he described a seizure in August 2010 of firearms purchased by Ranferi Osorio and renewed his request for answers to the questions he raised in his March 4, 2011 letter. These letters were followed by additional written inquiries from Senator Grassley and Congressman Darrell Issa to Attorney General Holder on October 25, 2011 and February 27, 2012, and from Senator John Cornyn to Attorney General Holder on August 11, 2011 and October 2, 2012.

On September 25, 2012, Senator Grassley and Congressman Issa wrote to the Inspector General of DOJ requesting an investigation of ATF and DEA's contacts with Otilio Osorio and two accomplices; his brother Ranferi Osorio and neighbor Kelvin Morrison. Senator Cornyn made a similar request in a meeting with the Inspector General on July 20, 2012.

The Office of Inspector General (OIG) subsequently agreed to undertake a review of the matter. This report describes the results of the OIG's review.⁵

I. Methodology

Our investigation examined the information that the ATF, DEA, FBI, and DOJ obtained about the traffickers of the Osorio and Riendfliesh Firearms prior to Agent Zapata's death, and whether agents failed to seize firearms destined for Mexico. We paid particular attention to the information that was available to these agencies before Osorio and Riendfliesh made their firearms purchases. We also examined whether agents requested firearms dealers to make firearms sales to the traffickers of the Osorio and Riendfliesh Firearms.

To complete our investigation, we conducted approximately 70 interviews, including of agents, prosecutors, and the senior leadership of ATF Field Divisions in Dallas and Houston with knowledge of events related to and preceding the investigation of the Osorio brothers, Riendfliesh, and Barba – a firearms trafficker who purchased firearms from Riendfliesh.

We reviewed approximately 40,000 pages of documents that we obtained from the ATF, DEA, FBI, and DOJ. These included investigative case files, [REDACTED], correspondence, and internal memoranda that related to the Osorio brothers, Morrison, Riendfliesh, and Barba. We also examined

⁵ The public version of this report contains redactions of information the DEA and ATF determined is "law enforcement sensitive" (LES), including of Title III electronic surveillance material.

thousands of e-mails, primarily from the accounts of ATF staff. The Department completed its production of responsive documents in December 2015.

II. Organization

This report contains five chapters. The first chapter is this Introduction. Chapter Two provides background information about federal firearms regulations, the types of firearms discussed in this report, ATF's organization, and ATF intelligence reporting. Chapter Three describes information about the Osorio brothers and Morrison, including events leading up to the trafficking of the Osorio Firearm and ATF's knowledge of the Osorio brothers and Morrison's trafficking activities. Chapter Four addresses the Riendfliesh Firearm and ATF's investigation of Riendfliesh and Barba. Chapter Five presents our conclusions and recommendations.

CHAPTER TWO: BACKGROUND

I. Federal Firearms Regulations and Enforcement

A. ATF and the Federal Firearms Licensee

The Gun Control Act of 1968 (18 U.S.C. § 921, et seq.) is the primary federal law that regulates the firearms industry and firearms owners. ATF, which was transferred from the Department of the Treasury to DOJ in January 2003, administers and enforces the Act through licensing and inspections of Federal Firearms Licensees (FFL). An FFL is a person, partnership, or business entity that holds a license issued by ATF that allows it to “engage in the business” of dealing, manufacturing, importing, or repairing firearms.⁶

ATF Industry Operations Investigators are authorized to review FFLs’ records and inventory to ensure compliance with federal requirements. Violations can result in the revocation of an FFL’s license.⁷ Investigators also work with ATF special agents in cases where criminal activity is suspected.

B. Recordkeeping Requirements and Form 4473

FFLs are subject to several federal recordkeeping requirements. They must report to ATF whenever they transfer more than one handgun within a 5-business day period to the same individual who is not licensed to sell firearms. See 18 U.S.C. § 923(g)(3). These multiple sales are reported on an ATF form that includes identifying information about the purchaser, the firearms, the date of transfer, and the FFL. ATF uses multiple sales reports to verify gun dealers’ records, to detect suspicious activity, and to generate investigative leads.⁸

In addition, each FFL and unlicensed purchaser of a firearm must complete an ATF Form 4473 Firearms Transaction Record, commonly referred to as a Form 4473, for every firearm sale. The FFL must maintain the completed form and make it available to ATF upon request. The primary purpose of Form

⁶ Under federal law, a person is “engaged in the business” when he devotes time, attention, and labor to any of these activities with the “principal objective of livelihood and profit through the repetitive purchase and resale of firearms[.]” A person who buys or sells firearms in connection with a personal gun collection or as a hobby is not considered “engaged in the business” and therefore does not require a license from ATF. See 18 U.S.C. § 921(a)(21).

⁷ U.S. Department of Justice Office of the Inspector General, *Review of ATF’s Federal Firearms Licensee Program*, Evaluation and Inspections Report I-2013-05 (April 2013), 7-8, 26-27.

⁸ On July 12, 2011, ATF implemented an identical reporting requirement for sales of certain types of rifles. The reporting requirement, applies to rifles having the following characteristics: (1) semi-automatic; (2) a caliber greater than .22; and (3) the ability to accept a detachable magazine. The reporting requirement applies to sales that occurred on or after August 14, 2011, and is limited to FFLs located in Arizona, California, New Mexico, and Texas.

4473 is to determine whether a buyer is prohibited from lawfully possessing or receiving a firearm. Under current federal law there are nine categories of persons prohibited from possessing or receiving a firearm, including persons under indictment for or convicted of a felony, persons adjudicated mentally defective or committed to a mental institution, persons convicted of a misdemeanor crime of domestic violence, and persons who are illegally in the United States. See 18 U.S.C. §§ 922(g), (n). Form 4473 requires the buyer to check a "yes" or "no" box in response to a series of questions that enumerates the nine disqualifying categories.⁹

Form 4473 also requires the buyer to certify that he is the actual purchaser of the firearm. It is unlawful for an individual to purchase a firearm for someone else, and an FFL may not sell a firearm to anyone the FFL knows is not the actual purchaser. ATF refers to such transactions as "straw purchases" and to the buyers who falsely complete Form 4473 as "straw purchasers." ATF defines a straw purchase as "the acquisition of a firearm(s) from a federally licensed firearms dealer by an individual (the 'straw'), done for the purpose of concealing the identity of the true intended receiver of the firearm(s)." ATF O 3310.4B.

C. Tracing Firearms and Tracking "Suspect Guns"

ATF's National Tracing Center (NTC) conducts firearms traces that allow it to link suspects to a firearm in a criminal investigation, identify potential firearms traffickers, and detect domestic and international patterns in the sources and kinds of crime guns. A firearms trace refers to tracking the history of a "crime gun" – a firearm that is illegally possessed, used in a crime, or suspected to have been used in a crime – using characteristics of the gun such as its serial number. The history includes identifying the source of the firearm (the manufacturer and/or importer), the chain of distribution (the wholesaler and/or retailer), and the first unlicensed purchaser of the firearm. The NTC also operates a laboratory that, among other things, attempts to restore firearm serial numbers that have been obliterated.

Trace requests to the NTC can be made by any accredited federal, state, or local law enforcement agency in the United States or abroad and are submitted by mailing or faxing an ATF form that requires the requester to provide information about the circumstances of the firearm's recovery, the agency making the request, the firearm (such as serial number, manufacturer,

⁹ In addition to completing Form 4473, FFLs are required to request a background check of each potential purchaser through the National Instant Criminal Background Check System (NICS) to verify that the potential purchaser is not prohibited from receiving or possessing a firearm. NICS is a computerized national records system established by the Brady Handgun Violence Prevention Act of 1993. The FBI is responsible for administering NICS, and ATF is responsible for ensuring that FFLs comply with the Brady law and investigating criminal violations of the law.

type, caliber, and model), and the possessor of the firearm.¹⁰ If the trace is successful, ATF provides the requester the identity of the first unlicensed buyer of the firearm, the FFL from which the firearm was purchased, and the date of purchase. Since January 2005, trace requests also can be submitted through eTrace, a secure, Internet-based system that allows users from accredited domestic and international law enforcement agencies to submit requests, monitor the progress of traces, and receive results electronically.

The NTC also maintains the Suspect Guns Database, which contains identifying information about firearms that are suspected of being illegally trafficked but have not been recovered.¹¹ The information is submitted to the NTC by ATF agents and investigators and includes the purchaser data associated with the firearm, the purchase date, the identity of the FFL, and the number of the ATF investigation to which the firearm is connected. If a suspect gun is subsequently recovered and traced, the NTC will notify the investigator who submitted the firearm as a suspect gun of its recovery and provide the investigator with the contact information for the individual who submitted the trace request.

D. Applicable Federal Criminal Statutes and Straw Purchasing

Firearms trafficking or straw purchasing is not specifically prohibited by federal statute. Instead, these activities are investigated and charged under a variety of criminal statutes depending on the circumstances of each particular case. ATF's investigative guidelines and the Department's Federal Firearms Manual identify the following statutes as commonly used in straw purchasing cases:

18 U.S.C. § 922(a)(1)(A), Willfully engaging in a firearms business without a license. This charge is used against an individual who is not a licensed dealer but who buys and sells guns in a business capacity.

18 U.S.C. § 922(a)(6), Knowingly making a false statement or presenting false identification in connection with a firearm purchase. This charge is used against an individual who makes a false statement or presents false identification that is intended or likely to deceive the FFL with respect to a fact that is material to the lawfulness of the sale, such as information pertaining to the buyer's identity, age, state of residency, or certification that the buyer is not a "prohibited person" under the Gun Control Act.

18 U.S.C. § 922(g)(1), Knowing possession of a firearm by a convicted felon. In the straw purchasing context, this charge is used against

¹⁰ Foreign law enforcement agencies must sign a Memorandum of Understanding with DOJ prior to submitting trace requests.

¹¹ This capability is now called the Firearms Recovery Notification Program.

an individual with a felony conviction for whom a straw purchaser buys a firearm. As a convicted felon, the individual is a "prohibited person" under the Gun Control Act and therefore may not possess a firearm.

18 U.S.C. § 924(a)(1)(A), Knowingly making a false statement. This charge is used against an individual who knowingly makes a false statement to an FFL or in the records the FFL is required to maintain. For example, this charge is brought against an individual who stated on Form 4473 that he was the actual purchaser of the firearm, when in fact he was purchasing the firearm for someone else (and not as a gift). Notably, unlike a false statement charged under 18 U.S.C. § 922(a)(6), a false statement charged under § 924(a)(1)(A) need not be "intended or likely to deceive" the firearms dealer nor "material to the lawfulness of the sale" – the only requirement is that the statement is false.

A false statement charge under Sections 922(a)(6) and 924(a)(1)(A) requires the government to prove that a defendant knew the statement was false, but does not require the government to prove that the defendant knew making the false statement violated the law.¹² In a straw purchasing case the government must show that at the time the defendant bought a firearm, he intended to purchase it for or on behalf of another individual (not as a gift) and therefore knew it was false to state that he was the actual purchaser.¹³

ATF has identified circumstances that it considers indicative of straw purchasing and gun trafficking. These include the following:

- multiple sales to a purchaser who appears on past gun traces;
- sales of five or more firearms to a single buyer;
- sales of multiple firearms at the same FFL on the same day;
- trace requests for firearms purchased as part of a multiple sale;
- trace requests with a "short time-to-crime" (the time that passes between the purchase of a gun and its recovery in connection with a crime);
- sales paid for in cash; and
- multiple sales of guns considered "weapons of choice" for drug trafficking organizations.

E. Firearms Seizure and Forfeiture

ATF special agents are authorized by federal law to make seizures of property, including firearms. Property may be seized either as evidence of a

¹² The statutory maximum penalty for a violation of Section 922(a)(6) and Section 924(a)(1)(A) is 10 years and 5 years imprisonment, respectively.

¹³ In *Abramski v. United States*, 134 S. Ct. 2259, 2263 (2014), the Supreme Court held that straw purchasers can be prosecuted under Section 922(a)(6) "whether or not the true buyer could have purchased the gun without the straw."

crime or for the purpose of initiating a forfeiture action. ATF also authorizes agents to take custody of property that is abandoned by an owner.

1. Property Seized as Evidence

According to ATF regulations, an agent may seize property solely for its use as evidence where there is probable cause to believe that the property will "aid in a particular apprehension or conviction." ATF Order 3400.1B. However, if ATF also has a statutory basis to forfeit the firearm, ATF regulations require the agent to seize the property for forfeiture and simultaneously use it as evidence. In addition, property that originally is seized as evidence can subsequently be determined to be subject to forfeiture. If this occurs, the agent is required to initiate forfeiture proceedings.

2. Property Seized for Forfeiture

An agent is authorized to seize property for the purpose of initiating a forfeiture action where there is probable cause to believe the property was used, intended to be used, or involved in a violation of federal law for which ATF has primary jurisdiction. The Gun Control Act is one such federal law. Under the Act, firearms and ammunition can be forfeited if there is probable cause to believe they are involved in, used in, or intended to be used in certain violations of the Act. 18 U.S.C. § 924(d). The requisite criminal intent in some of the statutes that can predicate forfeiture is "knowing" and in others is "willful."¹⁴ The violations described above that are commonly used in straw purchasing cases are among the violations that can predicate a forfeiture action. 18 U.S.C. § 924(d)(1). Property seized by an agent for forfeiture is forfeited only after the agency completes a legal proceeding that is intended to give individuals with a potential claim to the property an opportunity to contest the forfeiture.

II. ATF's Mission, Organization, and HIDTA Participation

According to its most recent strategic plan, ATF's mission is to "protect[] our communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products." To support its mission, ATF employs special agents, Industry Operations Investigators, and other staff, most of whom are assigned to one of ATF's eight directorates.¹⁵ The Office of Field Operations is the largest

¹⁴ A "knowing" violation of the law occurs when the defendant had knowledge of the facts that constitute the offense (e.g., in a false statements case, the defendant knew that the statement was false). A "willful" violation occurs when the individual was aware that the conduct was unlawful. See *Bryan v. United States*, 524 U.S. 184, 191-99 (1998).

¹⁵ The eight ATF directorates are the Offices of Enforcement Programs and Services, Field Operations, Management, Professional Responsibility and Security Operations, Public and Governmental Affairs, Science and Technology, Strategic Intelligence and Information, and Training and Professional Development.

directorates, accounting for the majority of the agency's employees, and has primary responsibility for administering ATF's Field Divisions. ATF's senior leadership includes a Director, Deputy Director, Chief of Staff, Chief Counsel, and Assistant Directors of the eight directorates.

ATF has two Field Divisions within Texas. The ATF Dallas Field Division covers the northern portion of Texas and the State of Oklahoma, with field offices in both states, including Oklahoma City and El Paso. The ATF Houston Field Division covers the southern portion of Texas, with field offices in several cities, including Laredo, San Antonio, and Beaumont.

Both the ATF Dallas and Houston Field Divisions participate in the High Intensity Drug Trafficking Areas (HIDTA) Program. HIDTA, which is administered by the Office of National Drug Control Policy (ONDCP), provides assistance to federal, state, local, and tribal law enforcement agencies that operate in areas that are major drug trafficking centers, including funding for various initiatives such as drug intelligence and information-sharing, enforcement, and drug use prevention and treatment. According to the ONDCP, there are 28 HIDTAs which cover approximately 60 percent of the U.S. population. The North Texas HIDTA, for example, covers 23 counties in the Dallas area and consists of 4 enforcement groups (2 DEA-led groups, 1 ICE group, and 1 ATF group) and a regional intelligence support center. Agents from various federal, state, and local law enforcement entities are assigned to these enforcement groups. According to a former head of the ATF HIDTA Group, the unit typically is staffed with between five and nine ATF agents and between four and eight task force officers, who are drawn from either state or local law enforcement or from other federal agencies.

During 2010 and 2011, the Dallas Field Division had three agent groups in Dallas: an arson group, a HIDTA Group, and a general firearms group (Group III) that investigated firearms trafficking in addition to other firearms related offenses. It also had an Intelligence Section that collected, analyzed, and disseminated intelligence. The Houston Division included a firearms trafficking group (Group V) and an Intelligence Section, in addition to other enforcement groups.

III. Firearms Descriptions

According to ATF, the Mexican drug cartels have developed preferences for particular firearms. These include powerful long arms with high capacity ammunition clips. Examples are the Barrett .50 caliber rifle, AK-47 type rifles, and AR-15 type rifles. The firearms purchased by Otilio Osorio and Riendfliesh both were variants of the AK-47 (a Draco 7.62 caliber pistol and a WASR-10 7.62 caliber semi-automatic rifle). Photographs of these firearms and the Barrett .50 caliber rifle appear below.

Photo 2.1: Select Firearms¹⁶

DRACO



WASR-10



BARRETT .50 CALIBER



¹⁶ These photos are for illustrative purposes only; they are not photos of the actual firearms purchased by Otilio Osorio and Riendfliesh.

CHAPTER THREE: THE OSORIO BROTHERS AND MORRISON

In this Chapter we describe the information that was available to ATF, DEA, FBI, and DOJ about the firearms trafficking activities of the Osorio brothers and Morrison prior to their arrests on February 28, 2011. We focus particular attention on information that ATF had before Otilio Osorio purchased one of the firearms that was used in the attack on Agents Zapata and Avila (Osorio Firearm). We also describe ATF's and DEA's reaction to the Osorio brothers' delivery of firearms [REDACTED] in November 2010; ATF's response to derogatory information about the Osorio brothers and Morrison, including the timing of their arrests and whether ATF improperly failed to seize firearms they trafficked to Mexico; the impact of Agent Zapata's murder on ATF's investigative activity; and whether agents requested FFLs to make firearms sales to the Osorio brothers and Morrison.

We present this information as it accumulated over three distinct periods of time: (1) prior to the purchase of the Osorio Firearm; (2) an interim period after this purchase but before the Zapata/Avila shooting; and (3) following ATF Headquarters and Texas Field Offices being notified on February 25, 2011 that the Osorio Firearm was connected to the Zapata/Avila shooting scene.

The investigations of the Osorios and Morrison ultimately led to their guilty pleas, as well as those of numerous other straw purchasers.

I. Events Prior to Purchase of the Osorio Firearm

Firearms sales records collected by ATF show that the Osorio brothers and their neighbor, Kelvin Morrison, began purchasing numerous firearms in their own names in the summer of 2010. According to these records, Morrison acquired the first of these firearms in June 2010 followed by Ranferi and Otilio Osorio's purchases in July and September, respectively.¹⁷ By the time of their arrests on February 28, 2011, ATF records reflected that Morrison had acquired 33 firearms, Otilio Osorio had acquired 23 firearms, and Ranferi Osorio had acquired 17 firearms.

In addition to Morrison, the Osorio brothers recruited seven straw purchasers to facilitate their firearms trafficking operations.¹⁸ Along with the Osorios and Morrison, we refer to these individuals collectively as the "Osorio

¹⁷ We are not aware of any firearms purchases by the Osorios or Morrison prior to these dates, though those could have occurred. ATF does not collect information on all firearms purchases. See discussion in Chapter Two of this report regarding ATF's collection of firearms sales information.

¹⁸ These persons are: Kevin Bueno, Luis Carbajal, Angel Monroy, Angela Garcia, Edna Pascal, Rosendo Quinones, and Eder Talamantes. Angela Garcia and Edna Pascal are pseudonyms.

organization.” According to ATF records, the earliest straw purchases by any of these individuals occurred in June 2010. By the time of Otilio Osorio’s purchase of the Osorio Firearm on October 10, 2010, the Osorio organization had acquired approximately 130 firearms. This number grew to 208 by the time that the Osorios and Morrison were arrested on February 28, 2011.

Beginning in June 2010, ATF received information indicating that Ranferi Osorio could be trafficking firearms to Mexico, and by September, had obtained information implicating Morrison as well. ATF acquired this initial information from two ATF investigations that were focused on firearms trafficking activities originating in Oklahoma (Reyes investigation) and New Mexico (Gonzalez investigation), and from ATF handgun multiple sales and trace reports. We describe these investigations and intelligence reporting below.

We did not find evidence that DEA, FBI, DOJ Headquarters, or the U.S. Attorney’s Office for the Northern District of Texas obtained information about the Osorio brothers or Morrison prior to Otilio Osorio’s purchase of the Osorio Firearm on October 10, 2010.

A. The Reyes Investigation (Oklahoma City, April 2010)

ATF’s investigation of Francisco Reyes, a narcotics detective for the Oklahoma Bureau of Narcotics, began after ATF’s Oklahoma City field office received information on April 30, 2010 from an FFL in Oklahoma City who became suspicious about the behavior of one of Reyes’ straw purchasers, Jorge Blanco. ATF agent Cecil Hardy contacted the FFL and learned that Blanco had purchased five firearms 2 days earlier and was attempting to purchase three more firearms that day.¹⁹ The FFL became suspicious of Blanco after a female who was with him attempted to purchase firearms that Blanco had selected. The FFL delayed the sale until he could confer with ATF. Hardy requested the FFL to further delay the sale until ATF could speak with Blanco.

Hardy and another ATF agent interviewed Blanco at his residence on May 1, 2010. Blanco initially told the agents that he had purchased firearms for his father, but later admitted to the agents that he had purchased firearms for his “best friend,” Francisco Reyes. He stated that Reyes had given him money in the past and instructed him which weapons to purchase. Blanco admitted to completing numerous firearms purchases for Reyes, including from the FFL who contacted ATF. However, the next day Blanco recanted his story when the ATF agents visited him again. Blanco stated that he had purchased firearms with his own money and had given the firearms away as gifts.

Following the interviews with Blanco, several witnesses in another ATF investigation in Oklahoma City told ATF agents that they had sold firearms to Reyes. These witnesses included a police officer who stated that Reyes

¹⁹ Cecil Hardy is a pseudonym.

wanted to purchase a .50 caliber semi-automatic rifle within approximately the next 2 days. Hardy explained to the OIG that this police officer also was an FFL and wanted to sell Reyes the rifle. After conferring at the time with the U.S. Attorney's Office about [REDACTED], Hardy received permission from the FFL [REDACTED] to transfer the rifle and an AK-47 to Reyes in a location where ATF could conduct surveillance on the transaction.

On June 8, 2010, ATF agents observed Reyes meet the FFL in a parking lot in Oklahoma City where Reyes purchased the two rifles for \$11,200 in cash. Prior to the purchase ATF [REDACTED] on Reyes' vehicle [REDACTED].²⁰ After Reyes took possession of the rifles, agents followed him to his residence where he retired for the evening. The agents continued [REDACTED] through the night. Another ATF agent assigned to the Reyes investigation, Kirby Stanton, said that the ATF agents had instructions from Dallas Field Division Special Agent-in-Charge (SAC) Robert Champion that they were not to allow the firearms to reach Mexico.²¹

The following day Reyes travelled to Woodward, Oklahoma, which is approximately 2 hours northwest of Oklahoma City. Hardy estimated that five law enforcement vehicles followed Reyes and said that Reyes entered a gun store after arriving in Woodward. Hardy told the OIG that there was "a little bit of confusion" with the surveillance because, unbeknownst to the ATF agents, Reyes purchased another .50 caliber rifle at the gun store in Woodward. Hardy stated that one of the ATF agents believed that he observed Reyes carry the .50 caliber rifle that Reyes purchased in Oklahoma City into the gun store in Woodward, which proved to be inaccurate. The agents therefore did not realize he was leaving the store in Woodward with an additional .50 caliber firearm. Hardy stated that he learned following Reyes' arrest that the .50 caliber rifle that Reyes purchased in Woodward was recovered in Mexico. Trace information on the firearm revealed that it was recovered with a "time to crime" of only 37 days.²²

Reyes then left Woodward, Oklahoma and travelled toward Texas, stopping at a parking lot near an exit from the interstate highway where a BMW sports car was parked. Hardy said that it was extremely difficult to maintain surveillance at that location because the area was "wide open" and that the ATF agents relied upon the tracking devices installed on Reyes' vehicle [REDACTED].

²⁰ ATF had obtained warrants from the State of Oklahoma authorizing use of the tracking devices on Reyes' vehicle [REDACTED].

²¹ Kirby Stanton is a pseudonym.

²² "Time to crime" refers to the time that passes between the purchase of a gun and its recovery in connection with a crime. ATF considers a short "time to crime" to be an indicator of firearms trafficking.

██████████. Reyes subsequently was observed driving in the opposite direction – north toward Oklahoma City – and agents determined that the ██████████ ██████████ Range Rover (registered by someone other than Reyes), which some of the agents followed to a residence in Lewisville, Texas (a suburb of Dallas), and then to an apartment in Dallas (Montfort apartment).

ATF was familiar with the Montfort apartment from another of its investigations. In May 2010, Senior ATF Special Agent James Erichson, who was assigned to Group III of the Dallas Field Division and worked out of a resident field office in Plano, Texas, opened an investigation with two local police departments into drug and firearms trafficking in the Dallas area.²³ ATF developed information indicating that the Montfort apartment was being used to store drugs, currency, and firearms.

ATF agents from Oklahoma City and Dallas maintained continuous surveillance at the Montfort apartment for the next 4 days, until June 13, when they determined that the .50 caliber rifle had been moved to a Ford Explorer that they followed to Mesquite, Texas. On June 14, agents continued surveillance on the Explorer, which travelled to San Antonio, Texas accompanied by a blue Saturn.

The following day, June 15, agents followed both vehicles as the vehicles drove toward the border with Mexico. ATF requested assistance from the Texas Department of Public Safety, which stopped the vehicles in the vicinity of Eagle Pass, Texas. The Explorer contained 14 firearms and 11 ammunition magazines, and the Saturn contained 31 firearms and 54 magazines that were found in 2 military style duffel bags. Many of the seized firearms had obliterated serial numbers. Agents recovered the .50 caliber rifle and the AK-47 that Reyes received in Oklahoma City.

The driver of the Explorer was identified as Antonia Lopez, and the driver of the Saturn was David Hance-Colon. Examination of Lopez's cell phone and statements made by Hance-Colon revealed that they were in contact with Lopez's son, Marino Castro Jr., who later was arrested by ATF and admitted in an interview in October 2011 (8 months after Agent Zapata's murder) that he had visited the Osorio residence to receive firearms. Castro also stated that he had visited the Montfort apartment.²⁴

A photograph of some of the firearms recovered from the Saturn vehicle along with the military style duffel bags appears below in Photo 3.1:

²³ James Erichson is a pseudonym.

²⁴ Agent Erichson told the OIG that he found no evidence that the Osorios had visited the Montfort apartment.

Photo 3.1: Firearms Recovered in Eagle Pass, Texas



Source: ATF

Reyes was not immediately arrested following the Eagle Pass seizure. Hardy told the OIG that he was preparing search and arrest warrants for Reyes around June 15, but could not recall why the warrants were not executed until approximately 2 months later. Stanton said that he did not recall discussions about arresting Reyes immediately after the Eagle Pass seizure and that the agents were still trying to identify who else was involved in firearms trafficking with him. Stanton said that agents were conducting surveillance on Reyes and had a tracker on Reyes' car. According to the Assistant U.S. Attorney in the Western District of Oklahoma assigned to the Reyes case, Alan Vaughn, there was probable cause to arrest Reyes after the Eagle Pass seizure, though it would have amounted to only a single charge.²⁵ Therefore, agents and staff at the U.S. Attorney's Office subsequently opted to arrange for a second sale of firearms to Reyes in late July, as we describe further below. Stanton said that the decision to proceed with the second sale to Reyes reflected a consensus between ATF and the U.S. Attorney's Office that they needed more evidence to increase the chances of conviction. According to Stanton, "if someone does something once, he can maybe say that he didn't know about it or he didn't know what they were doing."

²⁵ Alan Vaughn is a pseudonym.

Two days after the Eagle Pass seizure, another ATF agent from Oklahoma City who assisted Hardy with the Reyes investigation, Ralph Ramsey, was processing evidence from the seizure when he noticed two identification tags in one of the military-style duffel bags taken from the Saturn vehicle.²⁶ Ramsey told the OIG that Ranferi Osorio's name was written on the tags and that the tags identified his home address as Lancaster, Texas, which is approximately 16 miles south of Dallas. Ramsey stated that he contacted Erichson, who had assisted with the surveillance at the Montfort apartment, and informed him about the tags. Ramsey said that he asked Erichson to obtain driver's license information about Osorio, which Ramsey later received from Erichson and included in his records. Ramsey said he otherwise "left it in [Erichson's] hands" to follow-up on the Osorio tag information.

Following his communications with Ramsey, Erichson proceeded to collect information about Ranferi Osorio. ATF documents show that on June 25, 2010 he obtained Osorio's driver's license information, and on June 28 he obtained public records information about him, including identification of his prior military service. In addition, Erichson told the OIG that he conducted a criminal history check on Osorio and a search of ATF's databases to determine whether he had made prior firearms purchases, both of which were negative. Erichson said that he added Osorio to N-Force, ATF's case management system, as a "person" in the Montfort apartment case based on the discovery of Osorio's tags during the Eagle Pass seizure.²⁷

Erichson also e-mailed Hardy and Ramsey with trace information for the firearms seized at Eagle Pass. The traces showed that two women, Angela Garcia and Edna Pascal, had purchased some of the seized firearms in the Dallas area within a few days prior to the seizure.²⁸ Their firearms were found in one or more of the military style duffel bags, of which one contained Ranferi Osorio's luggage tags. Erichson wrote to the Oklahoma City ATF agents on June 24 that "[w]e will follow-up on these suspects in Plano and keep you up to date as to what we turn up."

²⁶ Ralph Ramsey is a pseudonym.

The Texas Department of Public Safety in Eagle Pass retained the tags. ATF agents did not prepare a report of investigation concerning the tags until March 26, 2011 following Agent Zapata's death.

²⁷ Erichson also added Pascal, Garcia, and Quinones as "persons" in this case. Erichson said he was looking at Quinones because of the types of firearms he had purchased and that he lived in close proximity to the Montfort apartment. N-Force allows for the designation of individuals either as "persons" or "suspects/defendants." Erichson did not have knowledge at the time, however, that these individuals had links to the Osorio brothers.

²⁸ ATF learned after the arrest of the Osorio brothers that Garcia and Pascal are cousins. Garcia purchased nine firearms, five of which had obliterated serial numbers. Pascal purchased seven firearms, six of which had obliterated serial numbers. Traces on the firearms with obliterated serial numbers were completed in August and October 2010, prior to purchase of the Osorio firearm. Angela Garcia and Edna Pascal are pseudonyms.

Ramsey told the OIG that he identified the addresses of the two women from their driver's license records. He then informed Erichson that both Garcia and Pascal lived in Lancaster, Texas, the location identified on the duffel bag tags as Ranferi Osorio's home. Ramsey said that he believed that it was suspicious that the two women lived in the same city as Osorio, and that he understood that Erichson would investigate them as well as Osorio.

Hardy stated that Osorio was never a suspect in the Reyes case and he did not investigate him. Hardy said that he recalled that Erichson visited the Oklahoma City ATF field office sometime during the Reyes investigation and that Hardy and other agents in his office "came to an understanding" with Erichson that the Oklahoma City agents would handle any defendants in Oklahoma who were linked to firearms trafficking in the cases that Erichson and others from Dallas were investigating. According to Hardy, in his 12 years as an ATF agent in Oklahoma he had never worked on investigations outside of the state. Erichson told the OIG that he remembered a meeting with agents in Oklahoma City in October 2010, and from what he understood, the Dallas agents would follow up on subjects who were in the Dallas area and linked to the Montfort apartment.

Erichson proceeded to collect information about Garcia and Pascal. ATF documents show that on June 24, 2010 he obtained public records information about them from a law enforcement database. On July 1 and 2, he visited the FFLs where Garcia and Pascal purchased the firearms that were recovered at Eagle Pass and collected their 4473 forms.

We found that the public records information that Erichson obtained revealed that Pascal's last identified address was the Osorio residence in Lancaster, Texas. Erichson told the OIG that he did not recognize from the records that she shared a common address with the Osorios.²⁹ He also said that he did not realize that both Garcia and Pascal had prior homes that were within three-quarters of a mile from the Osorio residence.

Ramsey told the OIG that he was not aware that Pascal shared a common address with the Osorios and that he considered the information significant because it suggested that Ranferi Osorio may have had a bigger role other than providing the military style duffel bags that were confiscated in the Eagle Pass seizure. Hardy also said that he was unaware of the connection and that the information mattered to him because it appeared that Pascal and Garcia were buying the firearms for someone else or for Osorio.

We asked Erichson why he did not interview Osorio after collecting information about him in June 2010. Erichson said ATF did not consider interviewing Osorio as well as Pascal and Garcia because the Reyes case was sensitive (due to Reyes' position as a law enforcement officer) and ATF agents in

²⁹ Following his arrest in February 2011, Morrison told ATF agents that Pascal was Ranferi Osorio's acquaintance.

Oklahoma City were still developing their case on him. Erichson stated that to the best of his recollection Hardy and Hardy's acting supervisor in Oklahoma City, Calvin Campbell, requested that he not conduct interviews or take other actions that could alert Reyes that ATF was investigating him.³⁰ Erichson said that he understood such contacts would not be made until the Reyes investigation was completed. However, Hardy and Campbell said that they did not recall making such a request. Erichson also stated that, consistent with the cartel-based strategy that ATF was implementing at the time, the ATF agents were more concerned with trying to identify firearms traffickers and not individual purchasers.³¹ Oliver Hartman, Erichson's supervisor and head of Dallas Group III, told us that ATF Dallas was not investigating Osorio at this time, and that agents with either the Oklahoma City field office or DEA were doing so.³² As we describe below, DEA did not learn of the Osorios until November 2010.

On July 22, 2010, approximately 5 weeks after the Eagle Pass seizure, ATF monitored the sale of two AK-47 rifles between Reyes and the FFL who had sold him the .50 caliber rifle in Oklahoma City. [REDACTED]. Hardy stated that he assumed that the two weapons would be transported together, an assumption that he had also made regarding Reyes's transaction on June 8.

After Reyes took possession of the firearms, ATF agents followed him to several locations in Stillwater and Oklahoma City before he returned to his residence. Agents maintained surveillance [REDACTED] and followed Reyes to the same home in Lewisville, Texas, where the .50 caliber rifle had been taken on June 9. Hardy stated that agents continued surveillance on that residence until a search was conducted on August 10 during which the two ATF weapons that Reyes obtained from the FFL were recovered. ATF arrested Reyes the day before, on August 9, 2010, for various firearms charges. Agents Hardy and Ramsey told the OIG that they did not believe that agents in the Reyes case ever failed to seize firearms when they had the legal authority and opportunity to take them.

³⁰ Calvin Campbell is a pseudonym.

³¹ The "cartel-based strategy" refers to the Department's and ATF's efforts to combat firearms trafficking to Mexico at this time. We described in our report, *A Review of ATF's Operation Fast and Furious and Related Matters* (September 2012), several Department and ATF memoranda drafted in 2009 and 2010 that described these efforts. Among these was the Department's January 2010 memorandum entitled, *Strategy for Combating the Mexican Cartels*, commonly referred to as the Cartel Strategy. The strategy was based on the belief that a large share of the criminal activity occurring along the Southwest Border was perpetrated by a relatively small number of criminal organizations, and that the most effective means of combating the problem was "the use of intelligence-based, prosecutor-led multi-agency task forces, that simultaneously attack all levels of, and all criminal activities of, the operations of the organizations."

³² Oliver Hartman is a pseudonym.

On September 29, 2010, Reyes pled guilty to conspiracy and to illegally transferring firearms to an out-of-state resident. On December 7, he was sentenced to 35 months in federal prison.

In October 2010, Erichson requested that ATF's Intelligence Section obtain information from the Texas Workforce Commission about Garcia and Pascal. Erichson said that he made that request because he was working on putting together evidence for an indictment that related to the Montfort apartment, and he believed that Garcia and Pascal had acquired firearms associated with that location. Erichson stated that he intended to interview them but did not have the opportunity prior to early November 2010 and ultimately never did interview them. We found that ATF agents did not interview Garcia and Pascal until March 2011 following Agent Zapata's murder.

B. The Gonzalez Investigation (New Mexico, July 2010)

Information indicating that Ranferi Osorio and Morrison could be involved in firearms trafficking surfaced in another ATF investigation that began in July 2010 in New Mexico. ATF agent Terry Cole, assigned to a satellite office in Roswell, New Mexico within ATF's Phoenix Field Division, told the OIG that an FFL in Hobbs, New Mexico contacted ATF on July 25, 2010 to report a suspicious firearms purchase.³³ Cole said that the FFL stated that two brothers, Erik and Efrein Gonzalez, were buying eight AK-47s that day and that the FFL was delaying the sale to complete background checks.³⁴ Cole travelled 2 hours to the FFL's store and requested the FFL to contact him again if the brothers cleared their background checks. Cole stated to the OIG that he never instructed the FFL whether to make a sale to the Gonzalez brothers. While at the store Cole also learned that the brothers had purchased approximately 30 AK-47 magazines, which he told the OIG prompted him to recall receiving "be on the lookouts" (BOLOs) previously for two Hispanic males who had purchased \$1,500 worth of AR-15 magazines from another FFL in Hobbs. The other FFL identified the purchasers of the magazines as the Gonzalez brothers the same day – July 25, 2010.

Two days later, on July 27, 2010, Cole learned from the first FFL that the brothers had cleared their background checks. Cole contacted a local law enforcement officer to set up surveillance at the FFL's store. The following day the officer observed Erik Gonzalez arrive at the FFL's store and take possession of four AK-47s and travel to a residence on Dalmont Street in Hobbs. Cole returned to Hobbs to assist the officer with the surveillance, which ended at approximately 10:00 p.m. Cole told the OIG that there was no reason to continue the surveillance because Gonzalez had lawfully purchased the firearms and it did not appear that he was going to move the firearms that night.

³³ Terry Cole is a pseudonym.

³⁴ There are three Gonzalez brothers: Erik, Efrein, and Luke. Luke is a pseudonym.

On July 29, 2010, the FFL notified Cole that Efrein Gonzalez had visited his store and taken possession of four AK-47s. Cole and local law enforcement officers located Gonzalez that day driving a white Chevrolet Tahoe accompanied by his two brothers and followed the vehicle to a gun store. There, Luke Gonzalez attempted to purchase two semi-automatic firearms but failed his background check and was unable to complete the purchase.

Cole and the local officers followed the Tahoe from the gun store to the residence on Dalmont Street, where two other vehicles were parked – a white Xterra and a white Saturn. According to Cole, one of the brothers loaded firearms into the trunk of the Saturn, and the agents observed the Saturn and the Tahoe depart.³⁵ Cole stated that he did not attempt to follow the vehicles because he did not want to risk being detected, and instead contacted the El Paso and Eagle Pass ports of entry to place a BOLO for the white Saturn. Cole said that none of the eight AK-47s that the Gonzalez brothers purchased on July 28 and 29 were ever recovered.

Cole told the OIG that as of July 29, 2010 there was not probable cause to seize the firearms that the Gonzalez brothers had purchased or to arrest them. He said that the brothers had legally purchased the firearms and that there was nothing he could have done to prevent them from possessing the weapons.

On August 7, 2010, a sheriff's deputy stopped the white Saturn and arrested a 17-year-old juvenile 2 miles outside of La Pryor, Texas. The vehicle contained 23 rifles that included AK-47s, AR-15s, and 48 rifle magazines. The serial numbers on most of the weapons had been obliterated. The juvenile confessed to officers at the Sheriff's Department that he transported firearms for Erik and Efrein Gonzalez and said that Erik Gonzalez was going to pay him \$500 to drive the load of weapons and magazines into Mexico.

Cole was informed of the seizure and subsequently was able to locate video from a convenience store that showed Erik and Efrein Gonzalez providing the white Saturn to the juvenile on August 7. On August 13, Cole submitted a Significant Information Report to ATF Headquarters about the seizure.

Cole said that the Sheriff's Department sent the firearms to a Texas state laboratory to restore their serial numbers, and he received a report with the restored numbers on September 3, 2010. He then submitted trace requests on the firearms and obtained the results on September 15 and 17, 2010. Cole said that none of the traces linked to firearms that he had been investigating.

³⁵ Cole stated that he had placed a tracking device on the Xterra earlier in the day while the vehicle was parked at the Dalmont Street residence, but the vehicle did not depart the residence. He told us that he did not seek authorization for the tracking device from the U.S. Attorney's Office because there was no requirement at the time to obtain a warrant to install a tracker.

The trace results that Cole received showed that seven of the seized firearms had a "time to crime" of 2 weeks or less, and two of these seven firearms were purchased by Ranferi Osorio and one by Morrison. The trace results also showed that an additional four of the seized firearms were purchased by another individual who was subsequently identified to be an Osorio straw purchaser, Rosendo Quinones. Three of the firearms purchased by Quinones had a "time to crime" of only 1 week. The seven firearms with a "time to crime" of 2 weeks or less all had obliterated serial numbers. Cole said that he was not familiar with any of the subjects identified from the traces.

As discussed below, on September 21, 2010, an ATF intelligence analyst in Dallas contacted Cole after he noticed the results of the La Pryor traces and informed him that Ranferi Osorio may be trafficking firearms to Mexico. He recommended that Cole confer with Erichson. Cole told the OIG that he contacted Erichson and understood from him that Erichson was investigating the subjects identified from the traces.

Cole stated that after the La Pryor seizure he monitored the Gonzalez brothers' firearms purchases, but they ceased attempting to make purchases for several months.³⁶ In January 2011, Cole learned from the same FFL that Erik Gonzalez had tried to purchase a pistol. The FFL declined the sale. Cole told the OIG that he believed that the La Pryor seizure scared the Gonzalez brothers and that they temporarily ceased their firearms trafficking activities.

ATF arrested Erik Gonzalez on March 2, 2011, following Agent Zapata's murder, but was unable to locate Efrein Gonzalez.³⁷ A warrant remains outstanding for his arrest. Erik Gonzalez stated during an interview with ATF agents on March 2 that following the La Pryor seizure the Zetas threatened him and that his uncle had disappeared in Mexico 3 days after the seizure. Gonzalez told Cole that he believed his uncle had been murdered in retaliation for the lost weapons.

Cole said that he did not believe that he ever failed to seize firearms in the Gonzalez case when he had the legal authority and opportunity to take them.

C. ATF Intelligence Reporting (August to October 2010)

In addition to information ATF had from the Reyes and Gonzalez investigations, an ATF intelligence analyst in Dallas, Raymond Langward, began to notice references to Ranferi Osorio and Morrison in ATF handgun multiple

³⁶ In addition, during this period Cole learned that the father of the Gonzalez brothers was attempting to acquire body armor and firearms. He said he attempted to arrange a meeting between the father and an undercover agent in November 2010, but the father declined the invitation to meet.

³⁷ We describe the circumstances that led to Erik Gonzalez's arrest in Section III.D., below.

sales and trace reports during late summer 2010.³⁸ On August 14, 2010, Langward reviewed a multiple sales report and observed that Morrison had made numerous handgun purchases in the preceding week (nine handguns in 5 days). Langward told the OIG that based on the number of purchases, he added Morrison to his personal "watch list" on August 14, 2010. Langward told us that he developed his "watch list" from notes he took on the intelligence reports he reviewed, and used it to remind him of names and to look for traces or future purchases by individuals that he suspected may be committing crimes.³⁹ By the end of August, he had noted several additional Morrison handgun purchases from multiple sales reports. An ATF multiple sales report from August 2010 also revealed that Ranferi Osorio had purchased three pistols, including a Draco.

On September 20, 2010, Langward reviewed weekly trace reports that identified traces that Cole, the ATF agent in Roswell, New Mexico, had obtained from the La Pryor seizure, including traces for Ranferi Osorio and Quinones. The following day Langward e-mailed Cole to alert him that "there is a belief that Ranferi Osorio out of Lancaster, Texas may be tied in to some other subjects that we have identified that may be involved in firearms trafficking to Mexico." Langward told the OIG he could not recall the facts that created the belief. Langward also informed Cole that Quinones was a subject in a case concerning the Montfort apartment that Senior Special Agent Erichson of the Dallas Field Division's Plano resident office was investigating.

Erichson, who was copied on Langward's September 21 e-mail along with Langward's supervisor, Intelligence Section Chief Forest Gibson, replied the same day and reminded others of the tags with Ranferi Osorio's name that had been found in a duffel bag from the Eagle Pass seizure in the Reyes case.⁴⁰ Erichson forwarded his e-mail to his colleagues, including his supervisor Hartman, and wrote that "everything seems to be tied together." Erichson told the OIG that he did not recall why he did not interview Ranferi Osorio during this time period.

Langward also telephoned Cole shortly after e-mailing him to ask whether ATF Roswell was investigating Ranferi Osorio. Cole told the OIG that he recalled receiving such a call and that he told the caller he was not familiar with the subjects identified from the traces from the La Pryor seizure. Cole stated that the person who contacted him from Dallas wanted him to talk with Erichson. Cole said that he telephoned Erichson and that he and Erichson discussed

³⁸ Raymond Langward is a pseudonym.

³⁹ Langward said that he did not distribute the "watch list" to others, but used it to prepare a quarterly report for the Dallas Field Division that identified suspicious purchasers whose names had not previously been shared with the agents in the Division. Morrison's name was not identified in Langward's next quarterly report because, as described below, Langward referred information about Morrison to Group III the next month.

⁴⁰ Forest Gibson is a pseudonym.

Ranferi Osorio and Morrison. He said he understood from the conversation that Erichson was investigating the subjects identified from the traces. On September 28, 2010, Cole sent an e-mail to his colleagues in the Phoenix Division stating that "ATF Dallas has an open case on these subjects" [*i.e.*, those identified from the traces].

However, Erichson told the OIG that he did not believe that anyone in the Dallas Field Division was investigating the Osorio brothers by late September 2010. When the OIG showed him Cole's September 28 e-mail, Erichson said that Cole may have developed a belief that the Dallas Field Division had an "open case" on Ranferi Osorio from searching N-Force. As noted above, Erichson had entered Ranferi Osorio in N-Force as a "person" in the Montfort apartment case based on the discovery of Ranferi Osorio's tags during the Eagle Pass seizure.

In late September 2010, Gibson also sent an e-mail to ATF staff in the Dallas area and Oklahoma City requesting that they meet to discuss their firearms trafficking cases "to find where they overlap." Gibson wrote that "[t]he SAC wants to make sure that we don't miss any opportunity to bring in additional defendants in these trafficking conspiracies." SAC Champion told the OIG that he wanted to bring all the parties together to determine whether their investigations related to each other, and if so, how. Champion told the OIG that he believed he attended the meeting but did not have a specific recollection of it. An Intelligence Officer in the Dallas Field Division who received Gibson's e-mail later began collecting information on the firearms trafficking cases that SAC Champion wanted evaluated, including the Reyes and Montfort apartment cases. The Intelligence Officer described her work as an effort to "connect the dots" between investigations. She stated that this work resulted in ATF Intelligence Research Specialists creating a chart that identified suspects in the investigations. However, she said that she did not recall attending the meeting requested by SAC Champion or collecting information in 2010 that involved the Osorio brothers. By this date, Otilio Osorio had not been identified as a participant in trafficking activities of his brother. The Intelligence Officer stated that her first recollection of the Osorio brothers was in March 2011, after ATF's investigation of them had commenced. Other ATF staff members we interviewed told us that they did not have a specific recollection of attending the meeting called by SAC Champion.

On September 26, 2010, Langward identified from another weekly trace report a firearm from the La Pryor seizure that was traced to Morrison. Langward circulated the information to agents in ATF's Dallas Division. Two days later Langward sent an e-mail to Hartman, agents in Group III, Gibson, Cole, and others stating that Morrison had purchased 15 pistols in August and September, and that 1 of the weapons had been seized in Cole's case.

Morrison was not interviewed by ATF agents, however, until 5 months later. Hartman, the Group III supervisor, said that in retrospect he did not think that the information about Morrison warranted closer examination or the

assignment of an agent from Group III to follow up because it was Cole's investigation. Cole told the OIG that he was not investigating Morrison. He said that Morrison lived in Dallas and, to the extent that anyone in ATF was investigating Morrison, it would be carried out by an agent in Dallas. According to Gibson, the delay with Morrison's interview was caused by a belief that Morrison was tied to other trafficking cases and that additional coordination with other agents was required. He said that his staff had several conversations with agents about Morrison and that deconfliction issues prevented the interview.

On October 7, 2010, an FFL contacted Langward to report seven "suspicious purchasers," including both Ranferi and Otilio Osorio, Morrison, and two persons who were identified following the Zapata murder as members of the Osorio organization: Quinones and Talamantes. This report from the FFL was the first time ATF received information directly linking Otilio Osorio to a suspicious firearms transaction.⁴¹ The FFL recounted that Talamantes was with Ranferi and Otilio Osorio on separate occasions. Langward e-mailed Hartman, Erichson, and Gibson and described the FFL's concerns about the number (a total of 40) and type of weapons purchased and that all of the transactions were in cash.⁴² Erichson responded to Langward and Gibson that he wanted someone to collect copies of the 4473s and obtain cell phone numbers of the FFL's employees. Erichson also wrote that the suspicious purchasers "are part of our Dallas organization." Erichson told the OIG that he was referring to persons who were acquiring firearms in Dallas and who were associated with ATF cases, which included the Montfort apartment case. Erichson forwarded Langward's e-mail to Agent Campbell, who was assigned at that time to Dallas Group III. Campbell responded that he already was looking at two of the suspicious purchasers (Robbins and Healey) and had obtained the relevant 4473s.⁴³

We did not find evidence that any ATF agents spoke with the FFL after October 7 regarding the reported suspicious purchases by these members of the Osorio organization, or that they requested that the FFL continue making sales to them. Dallas ATF Group III Supervisor Hartman stated that he did not provide additional instructions to agents in Group III because he was satisfied with the responses from Erichson and Campbell. Erichson stated that he asked Langward to have the FFL telephone him but he never received a call. He also said that he did not recall contacting the FFL. Erichson told the OIG that to the best of his knowledge ATF did not have an investigation of either of the Osorio brothers or Morrison as of early October 2010.

⁴¹ Prior to this report from the FFL, ATF had received multiple sales reports regarding two separate transactions, one on September 10, 2010 and one on September 30, 2010, in which Otilio Osorio had purchased a total of four handguns, two during each transaction. These transactions, however, had not been noted as suspicious by ATF analyst Langward.

⁴² The purchases were identified as follows: Morrison – 6 AK-47s and 3 Draco pistols; Ranferi Osorio – 11 AK-47s and 2 pistols, including 1 Draco; Otilio Osorio – 3 AK-47s and 2 Draco pistols; Quinones – 7 AK-47s; and Talamantes – 2 AK-47a and 4 Draco pistols.

⁴³ Robbins and Healey are pseudonyms.

We asked the Criminal Chief of the U.S. Attorney's Office for the Northern District of Texas, Joel Maddox, about the information that was available to ATF about the Osorio brothers and Morrison.⁴⁴ He told us that if an ATF supervisor had called him at the end of September or first part of October 2010 and presented the facts that were available to ATF at that time, he would have concluded that there was probable cause to believe that Ranferi Osorio and Morrison were involved in firearms trafficking. He stated that as of early October the investigation should have been worked "hard and fast" and that surveillance needed to be done. Maddox also said, however, that it would have been necessary to have a thorough discussion with the agents on the case in order to reach a judgment about the next steps in the investigation and that, absent that dialogue, it is not possible to state with certainty now about what would or would not have happened in September and October 2010. However, we found that agents from Group III did not confer with the U.S. Attorney's Office about either of the Osorios or Morrison during this period.

D. Purchase of the Osorio Firearm (October 10, 2010)

On October 10, 2010, Otilio Osorio purchased a Draco 7.62 caliber pistol from an FFL at the Dallas-Fort Worth Gun Show. We did not find evidence that ATF was aware of the purchase at the time. This firearm subsequently was recovered on February 23, 2011 by Mexican authorities who were investigating the death of Agent Zapata. Comparison of cartridge casings from the firearm and those found at the shooting scene showed that the firearm was used in the shooting involving Agents Zapata and Avila. Otilio Osorio informed investigators in April 2012 that the firearm was shipped to Mexico on either October 16 or October 23, 2010, with October 23 the more likely date. We found that Ranferi, Osorio, Otilio Osorio, Morrison, and associated straw purchasers had acquired approximately 130 firearms by October 10, 2010.

E. Summary: Information Available to ATF Concerning the Osorio Brothers and Morrison Prior to the Purchase of the Osorio Firearm on October 10

The information available to ATF's Dallas Field Division concerning Ranferi and Otilio Osorio and Morrison prior to October 10, 2010 included: (1) the discovery in June 2010 of Ranferi Osorio's luggage tags in a duffel bag containing firearms with obliterated serial numbers and short "times to crime" that were seized in Eagle Pass, Texas near the border with Mexico; (2) information obtained in June 2010 showing that one of the purchasers of the seized firearms described above, Pascal, listed the Osorio residence as her address in public records made known to ATF and that another purchaser, Garcia, resided less than 1 mile from the Osorio home; (3) trace results for three firearms (two for Ranferi Osorio and one for Morrison) with obliterated serial numbers and short "times to crime" that were seized on August 7, 2010,

⁴⁴ Joel Maddox is a pseudonym.

in La Pryor, Texas near the border with Mexico; (4) information collected in August and September 2010 from multiple sales reports for the Osorios and Morrison; (5) reporting in September 2010 from an intelligence analyst concerning multiple sales of handguns to Morrison and that Ranferi Osorio was a person of interest; and (6) a tip on October 7, 2010 from a concerned FFL in the Dallas area about the firearms purchases by Ranferi and Otilio Osorio, Morrison, and five others. ATF further knew that all of the firearms above were weapons of choice of Mexican drug cartels.

The map below identifies key locations and events with the Osorio's and Morrison's firearms trafficking.

Osorio and Morrison Event Locations

New Mexico

Hobbs

Agent: Cole

Events: (July 2010)

- Gonzalez firearms purchase
- ATF surveillance

Roswell

Agent: Cole

Location: Agent Cole's ATF office

Oklahoma

Woodward

Location: Gun store

Events: (June 9, 2011)

- Surveillance of Reyes purchasing .50 caliber rifle

Texas

Dallas

Agents: SAC Champion, ASAC Andrews, GS Hartman, Campbell, Dennison, Florence, Gibson, Intelligence Analyst Langward

Location:

- ATF Dallas Field Division Headquarters including Group III and Intelligence Group
- HIDTA including ATF and DEA led groups
- U.S. Attorney's Office for the Northern District of Texas

AUSAs: Maddox and Harden

Events: (June through August 2010)

- Surveillance of Montfort apartments

Eagle Pass

Agents: Various including Ramsey, Hardy, and Stanton

Location: Border crossing with Mexico

Events: (June 15, 2010)

- Seizure of Reyes firearms
- Seizure of Pascal and Garcia firearms

Texas

La Pryor

Agent: Hernandez

Events: (August 7, 2010)

- Seizure of firearms trafficked by Gonzales brothers, including firearms purchased by Ranferi Osorio (2) Morrison (1) and Quiñones (4)

Lancaster

Agents: Campbell, Ramirez, Green, Dennison, Florence, DEA TFOs Miller and Caldwell

Location:

- Home of Osorio brothers and Morrison
- Location of Osorio brothers' delivery of 40 firearms to ATF informant

Events: (November 9, 2010; February 24, 2011; February 28, 2011)

- Controlled delivery
- Operation Noble Hero "knock and talk" at Osorio residence
- Arrests of Osorio brothers and Morrison

Laredo

Agents: ATF: Ramirez, Green, Perez

DEA: Martinez, Filmore TFO: Miller

Location:

- ATF and DEA field offices
- Border crossing with Mexico

Events: (November 9, 2010)

- Seizure of firearms from controlled delivery

Plano

Agent: Erichson and GS Hartman Supervisor

Location: Agent Erichson's ATF office

Seizure Event =



No single ATF staff member was aware of all of the information above prior to October 10, 2010. Agent Erichson in Plano and Group III Supervisor Hartman and Intelligence Analyst Langward in Dallas were the most knowledgeable. They were aware of the Ranferi Osorio luggage tags found on a military-style duffel bag containing weapons seized at Eagle Pass; trace results linking Ranferi Osorio, Quinones, and Morrison to weapons seized at La Pryor; Langward's own reporting, including descriptions of Morrison's firearms purchases and that Ranferi Osorio was a person of interest; and the tip from the FFL regarding suspicious purchases of 40 firearms by Ranferi and Otilio Osorio, Morrison, Quinones, and Talamantes. Erichson also was aware of trace results showing that Pascal and Garcia had purchased weapons seized at Eagle Pass in one of the military-style duffel bags and that they resided in the same city as the Osorio brothers, and had been provided information showing that Pascal used the same address as the Osorio brothers. In addition, Erichson was responsible for investigating the Montfort apartment case, where he believed Pascal and Garcia had acquired firearms, and as to which he had listed Ranferi Osorio, Pascal, Garcia, and Quinones as persons of interest.

Dallas Field Division SAC Champion told the OIG that in the period prior to Otilio Osorio's firearm purchase on October 10, 2010 "nothing really stood out" about either of the Osorio brothers and that they did not appear to be significant traffickers. Champion stated that ATF possibly could have started looking at Morrison prior to October 10, 2010, but noted that firearms collectors sometimes purchase as many weapons as Morrison had acquired. Champion said that Hartman would have made the determination whether Morrison should be interviewed provided he received information from the Intelligence Section about Morrison's activities, which Hartman did.

Hartman told the OIG that he did not recall learning of Morrison until late November 2010, when an agent under his supervision, Roland Dennison, requested permission to investigate him. Morrison was not interviewed by ATF until February 23, 2011, as described in detail in Section III.B., below.⁴⁵

The timeline below presents key events prior to the purchase of the Osorio firearm.

⁴⁵ Roland Dennison is a pseudonym.

Timeline of Events Prior to the Purchase of the Osorio Firearm

Names and dates in red indicate knowledge of event

2010

JUNE

- 15: Eagle Pass seizure in Reyes case (Pascal and Garcia firearms) (Erichson 6/6/10, Hartman 6/16/10)
- 17: Discovery of Ranferi Osorio luggage tags (Erichson 6/24/10, Hartman 9/21/10, Langward 9/21/10)
- 24: Erichson notifies Oklahoma City ATF agents of weapons traces from Eagle Pass that identify Pascal and Garcia
Erichson receives information showing that Pascal resides with Ranferi Osorio
- 25: Ramsey informs Erichson that Pascal and Garcia reside in Lancaster, Texas; Erichson begins to collect information on Ranferi Osorio

AUGUST

- 7: La Pryor seizure in Gonzalez case (Ranferi Osorio, Morrison, and Quiñones firearms)
- 14: Langward notes Morrison purchased nine handguns in 5 days; places Morrison on his personal "watchlist"

SEPTEMBER

- 15-17: Traces from the La Pryor seizure are linked to Ranferi Osorio, Morrison, and Quiñones (Erichson 9/28/10, Langward 9/28/10)
- 21: Langward e-mails agents concerning La Pryor traces that "there is a belief that Ranferi Osorio out of Lancaster Texas may be tied in to some other subjects that we have identified that may be involved in firearms trafficking to Mexico." (Erichson 9/21/10, Hartman 9/28/10, Langward 9/28/10)
- 28: Langward e-mails agents about Morrison's firearm purchases in August and September and the trace results from the La Pryor seizure (Erichson 9/28/10, Hartman 9/28/10)

OCTOBER

- 7: An FFL tip identifies Osorios, Morrison, and other purchasers as "suspicious" (Hartman 10/07/10, Langward 10/07/10)
- 10: Otilio Osorio purchases Osorio firearm
Reporting available to ATF by this date shows 19 firearms purchases by Morrison, 13 by Ranferi Osorio, and 7 by Otilio Osorio

II. Events Following Purchase of the Osorio Firearm on October 10, 2010

As detailed below, following the tip from the FFL on October 7, 2010, ATF did not receive additional information about the Osorio brothers until November 9, 2010, when ATF and DEA conducted surveillance in Lancaster, Texas on the delivery of 40 firearms [REDACTED] by couriers who ATF and DEA identified later that day as the Osorio brothers. Morrison was observed with the Osorio brothers later on November 9, which was just 4 days after ATF had generated another multiple sales report on Morrison concerning his purchase of two Draco firearms.

Although an ATF agent began to collect information about Morrison in December 2010, he did not open an investigation on him until late January 2011. ATF did not initiate an investigation of the Osorio brothers until late February 2011, following Agent Zapata's murder. Agents involved in these investigations stated that they never had advance notice of firearms purchases by the Osorio brothers or Morrison, and that they did not fail to seize firearms from them when they had the legal authority and opportunity to take them.

Below we detail the events after October 10, 2010, and leading up to Agent Zapata's death. In addition to the Osorio brothers' delivery of firearms [REDACTED] for shipment to the Zetas, we describe ATF's handling of traces of those firearms, a misunderstanding by ATF Dallas Group III concerning HIDTA's intentions concerning the Osorio brothers, the initiation of ATF's investigation of Morrison, and ATF's participation in enforcement actions against the Zetas in response to Agent Zapata's murder.⁴⁶ We found that the Osorio brothers and their straw purchasers acquired approximately 78 firearms after October 10, 2010, including 49 firearms that they acquired after the November 9, 2010 firearms transfer [REDACTED], for a total of 208 prior to Agent Zapata's murder.

A. The November 9, 2010 Firearms Transfer Operation

On November 2, 2010, DEA agents in Laredo, Texas were [REDACTED]

[REDACTED].⁴⁷ At approximately the [REDACTED]

⁴⁶ We further describe HIDTA on page 12. In comments ATF submitted after reviewing a draft copy of this report, ATF stated that the Laredo [REDACTED] investigation was part of a broader, multi-district OCDETF investigation of the Zeta Cartel. According to ATF's comments, the standard practice in multi-district investigations of this nature is for the investigative agencies and U.S. Attorney's Offices to manage joint investigative strategies [REDACTED].

⁴⁷ [REDACTED]

ATF did not
(Cont'd.)

same time, [REDACTED] in another DEA investigation to DEA Agent Angus Martinez of DEA's Laredo office that Eduardo Mendoza-Robles (Mendoza), a drug dealer with connections to the Zetas and the persons [REDACTED] was seeking to arrange the delivery of 50 high-powered firearms from Dallas to Laredo.⁴⁸ Martinez indicated to the OIG that Mendoza [REDACTED] that he needed couriers to transport firearms and requested [REDACTED] who could bring a shipment from Dallas to Laredo.

Martinez said that after he learned about Mendoza's interest in firearms he decided to involve ATF in the investigation. On November 5, Martinez contacted ATF agent Nathan Green, who also was based in Laredo and assigned to ATF's Houston Field Division.⁴⁹

Green told the OIG that he recalled speaking with Martinez and informing him that ATF [REDACTED]

[REDACTED]. Green stated that he contacted ATF in Dallas [REDACTED] and was referred to Agent Campbell, who was assigned at that time to Group III. [REDACTED]

[REDACTED]

DEA and ATF agents in Laredo met on November 7, 2 days prior to the scheduled delivery of the firearms [REDACTED], to refine their plans. Participants included Green; ATF Laredo agent Sean Ramirez; DEA agent Martinez; Officer Eric Miller, a Laredo investigator who was assigned to a local

utilize wiretaps in the Osorio and Morrison investigations, or in its investigation of other members of the Osorio organization.

⁴⁸ Angus Martinez is a pseudonym.

⁴⁹ Nathan Green is a pseudonym.

⁵⁰ Philip Perez is a pseudonym.

DEA task force; and a DEA acting group supervisor.⁵¹ Miller told the OIG that the agents developed a proposed operational plan that was forwarded to ATF and DEA in Dallas.

One issue the agents discussed was whether to arrest the firearms couriers who were going to deliver the firearms in Dallas [REDACTED]. Martinez told the OIG that the agents decided that they were not going to arrest the couriers when they first appeared with the firearms because the agents did not want to alert the couriers to the investigation and eliminate the possibility of future leads. He said that he presumed, however, that ATF would "do something" with the couriers as time went on. The DEA acting group supervisor said that DEA did not want to "hit" the parking lot where the weapons were transferred due to concerns [REDACTED].

ATF agents Green and Ramirez, DEA Task Force Officer Miller, and a DEA agent from Laredo travelled to Dallas on November 8. Green's supervisor Perez said that he gave Green and Ramirez permission to travel to Dallas to assist with the firearms transfer but that he provided "marching orders" to them to ensure they would not start investigating suspects in Dallas, which is approximately a 6 hour drive from Laredo. According to Perez, the ATF Laredo office had few agents and he could not afford to allow them to conduct investigations in Dallas due to the volume of work in Laredo. A DEA Assistant Special Agent-in-Charge (ASAC) in Laredo said that he sent the Task Force Officer and DEA agent to Dallas to ensure that DEA's [REDACTED].

Green and Ramirez told the OIG that after arriving in Dallas they met with Campbell, ASAC Jesse Andrews, and for a brief time, with SAC Champion, to discuss planning for [REDACTED] and the seizure of the firearms in Laredo (collectively, the firearms transfer).⁵² Andrews told the OIG that he contacted Campbell's supervisor, Hartman, prior to the meeting to inquire about the operation and that Hartman did not know much about it. Andrews said Hartman told him that Campbell "was doing something on that" but that Hartman was unsure of the specifics.

According to the ATF and DEA agents who participated in planning the operation while in Dallas, they discussed [REDACTED] the ensuing surveillance and seizure. Campbell told the OIG that he took responsibility for writing the ATF operational plan, and that he was the on-scene commander for the operation.⁵³

⁵¹ Sean Ramirez and Eric Miller are pseudonyms.

⁵² Jesse Andrews is a pseudonym.

⁵³ Campbell opened a case in N-Force entitled "Laredo Zetas" on November 8, 2010. He told the OIG that he opened the case because he needed a case identification number in order to generate an operations plan, and that the scope of the case was limited to the firearms transfer.

He also led a briefing on the operational plan for the agents on November 9, the day of the delivery, and assisted in obtaining surveillance resources from DEA.

DEA Task Force Officer Miller stated that he informed Campbell during a meeting in Dallas about the decision not to arrest the couriers [REDACTED]. Campbell told the OIG that he believed that DEA or the ATF agents from Laredo informed him "to let them [the Osorio brothers] go," but he could not recall a specific conversation.⁵⁴ He said that he assumed thereafter that DEA did not want ATF to start conducting interviews of anyone. Miller also said that he informed Campbell that the persons who delivered the weapons would be indicted later as part of DEA's case in Laredo. However, Miller stated that he never told Campbell that ATF should not investigate the Osorio brothers.

According to Green, he discussed with Campbell while planning the firearms transfer that ATF Dallas would investigate any straw purchasers in Dallas who were identified from traces of the recovered firearms. Campbell also said that ATF Dallas was to follow up "to some extent" with the straw purchasers who had a nexus to the Dallas area, such as by evaluating the trace information. However, Campbell told the OIG that he had not provided investigative assistance regarding the straw purchasers before Agent Zapata was murdered despite having received traces from ATF Laredo agent Ramirez that showed purchasers in the Dallas area. He stated that the matter was DEA's case and that "[w]e were going to wait and move when they were ready for us to move." Campbell also stated that he did not have discussions with ATF Laredo about what was to happen with the Osorio brothers or Morrison following the firearms transfer.

The plan went into operation when ATF agents [REDACTED] on November 8, 2010. [REDACTED]

On the morning of November 9, ATF and DEA agents met at a local police station to review their plans. In addition to Laredo ATF agents Green and Ramirez and Dallas ATF agent Campbell, four agents from ATF Group III in Dallas and four DEA agents/DEA Task Force Officers (two from Laredo and two from Dallas) staffed the operation. According to agents who participated, the Laredo-based DEA and ATF agents were responsible for following the firearms to Laredo where they would be seized. The DEA and ATF agents in Dallas observed

⁵⁴ ATF and DEA identified the Osorio brothers and Morrison the afternoon of November 9, after the firearms transfer [REDACTED].

Agents provided differing descriptions of the respective roles of ATF and DEA in this phase of the operation. Nigel Caldwell, a DEA task force officer in Dallas who participated in the operation, said that ATF Dallas headed the operation and that he was “in the background . . . just basically filling in.”⁵⁵ Green described DEA’s role in similar terms and said that DEA in Dallas just observed or assisted with the operation and that ATF was involved to investigate the firearms violations. In contrast, Campbell told the OIG that it was clear to him that DEA was in charge of the operation given its investment of resources, such as agents and surveillance resource, and that ATF was helping them with the transfer of firearms.

[illegible]

⁵⁵ Nigel Caldwell is a pseudonym.

[REDACTED]

[REDACTED]

[REDACTED]

[Material redacted]

[REDACTED]

[REDACTED] DEA and ATF agents stated that they maintained continuous surveillance on the firearms before they were seized in Laredo later that day.

[REDACTED]

[REDACTED]

56

At approximately 7:20 p.m., deputies from the Webb County Sheriff's Office stopped the truck [REDACTED], seized the firearms, and [REDACTED]. ATF took custody of the firearms, which appear in the ATF photograph below.

56

[REDACTED]

Photo 3.4: Firearms Seized During Firearms Transfer Operation



According to Green, Agent Zapata came to ATF's office in Laredo to observe the seized weapons and record information about them. Agent Zapata was stationed in Laredo with ICE.

While the Laredo agents monitored [REDACTED], the Dallas agents followed the Osorio brothers. An ATF agent assigned to Group III, Roland Dennison, told the OIG that he conducted surveillance on the Osorio brothers for approximately 2 to 3 hours [REDACTED]. DEA Task Force Officer Caldwell said that he also followed the Osorio brothers and that the Osorio brothers performed "heat runs," or maneuvers to avoid law enforcement or other criminals. He stated that the Osorio brothers eventually returned to their home and a short time later were seen in their vehicle with a third person. Dennison stated that local law enforcement stopped the vehicle and identified the driver and passengers as the Osorio brothers and Morrison. Dennison said that surveillance terminated after these identifications were made.

ATF did not take further steps to investigate the Osorio brothers or Morrison immediately following the firearms transfer. ATF also did not consult with DEA or the U.S. Attorney's Office for the Northern District of Texas about the Osorio brothers' or Morrison's activities until the death of Agent Zapata. According to ATF Laredo Resident Agent-in-Charge Perez, his agents in Laredo did not investigate the Osorio brothers. The same was true for agents in Dallas. SAC Champion told the OIG that he learned from his staff of the need to proceed with caution due to the sensitivity of DEA's case in Laredo. Champion e-mailed William McMahon, ATF's Deputy Director of Field Operations (West), the afternoon of November 9, 2010 and reported the recovery of the 40 firearms in Laredo and that ATF Dallas was "[k]eeping it low key as to not [REDACTED]"⁵⁷ Champion also told the OIG that he understood from one of his ASACs, likely Andrews, that DEA did not want ATF to take action against the

⁵⁷ The OIG attempted to contact McMahon for an interview. He was no longer employed by ATF and was residing outside of the United States and did not return our telephone calls.

Osorio brothers, and that DEA's request had been communicated through ATF Laredo.

SAC Andrews stated that he recalled having discussions, probably with Hartman and Campbell, about not jeopardizing DEA's case by talking with straw purchasers in Dallas. According to Andrews, Campbell informed him [REDACTED]. Andrews said that he believed that arresting or even interviewing the Osorio brothers potentially would [REDACTED]."

We asked Hartman and Campbell why ATF did not investigate the Osorio brothers and Morrison immediately following the November firearms transfer. Hartman stated that DEA did not want ATF to take actions that would jeopardize DEA's case and ATF had been asked to "stand down" by DEA. He said that he recalled having several conversations with Campbell about the Laredo case and thinking that "we don't want to mess with the Osorios, go over and do surveillance on the house and get burned and screw everything up." However, Hartman said that he did not have a conversation with ATF's group supervisor in Laredo following the firearms transfer, and that he learned of DEA's purported request to defer investigation from Campbell. Hartman said he did not personally confer with any DEA staff about ATF deferring its investigation. According to Hartman, "Dallas Group III's chain of thought" regarding follow up to the November firearms transfer was that "[w]e will do what we need to if asked to do so, but we don't want to mess anything up."

Campbell said that he did not run the Osorio brothers or Morrison through any law enforcement databases after they had been identified on November 9. He said that the ATF Laredo office was responsible for the "proactive portion" of the case, and that "[t]hey kept the guns, they took the evidence, they kept [REDACTED]. It was their case." ATF Dallas, according to Campbell, merely assisted [REDACTED]. Campbell said that after the firearms transfer, ATF Laredo did not provide further direction on the case or request that he interview the Osorios. He stated that because he had not heard anything, he assumed that DEA did not want him to initiate contact with the Osorio brothers. He also said that he did not recall having conversations with the ATF Laredo agents about the Osorio brothers and Morrison. Campbell also was aware that the Osorio brothers could be associated with other criminal activities that multiple ATF agents within the Dallas Field Division were investigating. On November 10, 2010, he e-mailed Hartman informing him that "from what we are seeing on the surface," the Osorio brothers' shipment of firearms appeared to be connected to activities that Erichson and other ATF agents were investigating (i.e., the Montfort Apartment and Reyes cases).

Although Task Force Officer Miller informed Campbell that ATF should not arrest the Osorio brothers for delivery of firearms [REDACTED], and that the Osorio brothers would be indicted as part of DEA's Mendoza investigation, he and the DEA and ATF agents in Laredo denied

requesting ATF in Dallas not to investigate the Osorio brothers for other firearms offenses. ATF Laredo agents Green and Ramirez both told the OIG that they had no conversations with staff from ATF Dallas about refraining from contacting the Osorio brothers for fear of compromising a DEA case in Laredo. Caldwell, who was based in Dallas, also said that he never would have requested that ATF "stand down" from contact with the Osorio brothers and that he would have deferred to the DEA and ATF agents in Laredo.

ATF Headquarters received a written report about the firearms transfer shortly after it was completed. McMahon e-mailed SAC Champion the afternoon of November 9 asking whether the Dallas Field Division would prepare a Significant Information Report (SIR) for Headquarters. Champion responded that "[REDACTED] will happen in the Houston Division and don't want to step on their toes." Champion copied SAC Dewey Webb of the ATF's Houston Field Division, which encompasses the Laredo field office. Webb agreed to instruct the Laredo office to prepare the SIR. Webb's response, however, highlighted for McMahon that the restoration of the serial numbers from the firearms could lead back to ATF violations in Dallas. ATF Laredo's SIR was submitted on November 10 and described the delivery of the firearms [REDACTED], and the seizure of the firearms.

The Criminal Chief of the U.S. Attorney's Office for the Northern District of Texas, Joel Maddox, told the OIG that ATF did not contact the U.S. Attorney's Office about the Osorio brothers until after Agent Zapata's murder. He stated that there was probable cause to arrest the Osorio brothers as of the firearms transfer on November 9. He said that from that day forward, had his office been contacted and the information available to ATF provided, his office would have been "more than willing" to charge the Osorio brothers and Morrison with firearms offenses. He stated that he believed that the circumstantial evidence in the case, including prior seizures of their firearms and the Osorio brothers' delivery of approximately \$20,000 worth of firearms [REDACTED] with no exchange of money and minimal discussion [REDACTED] was sufficient to persuade a jury that they were engaged in criminal conduct.⁵⁸

We asked ATF whether the Osorio brothers could have been arrested in light of their participation in the delivery of firearms [REDACTED]. ATF Dallas agents, including SAC Champion, said that there was not probable cause to arrest the Osorio brothers solely based upon the delivery of firearms with obliterated serial numbers because they had not made statements demonstrating knowledge that the serial numbers on the firearms had been

⁵⁸ Although Criminal Chief Maddox believed that sufficient evidence existed to charge both Osorio brothers as early as November 2010, we recognize that any decision to file charges on them in that time frame should have been preceded by coordination between the U.S. Attorney's Offices in the Northern and Southern Districts of Texas (and other districts with related investigation that may have been impacted).

obliterated. Campbell also noted that the Osorio brothers were not prohibited from purchasing or possessing firearms.

We did not find evidence that DOJ Headquarters staff, including the Department's leadership, was informed about the firearms transfer and the role of the Osorio brothers, such as through ATF report submissions to the Office of the Deputy Attorney General. FBI records show that the FBI did not receive information about the Osorio brothers until after Agent Zapata's death.

B. ATF Actions Following the November 2010 Firearms Transfer

1. Traces on Seized Firearms

Following [REDACTED], ATF Laredo processed the firearms he had received from the Osorio brothers, including entering information about them into N-Force. Ramirez sent the 37 firearms with obliterated serial numbers to an ATF laboratory to attempt to have the numbers restored and requested expedited handling of them. Perez told the OIG that Ramirez assumed this responsibility because it did not make sense to send the firearms to ATF Dallas before sending them to the ATF Laboratory. On November 10, 2010, Ramirez requested urgent traces on the three firearms that did not have obliterated serial numbers.⁵⁹

Ramirez received the first trace result for a Dallas purchaser on November 17 and forwarded it to Campbell. The purchaser of the firearm, Eder Talamantes, was from Dallas and acquired the firearm on October 25, 2010, only 15 days prior to the Laredo seizure. Campbell e-mailed Ramirez that ATF Dallas would do a "work up" on Talamantes.⁶⁰

Green told the OIG that ATF Laredo sent Campbell the trace results because he believed that ATF Dallas was going to investigate leads from the traces. On November 18, 2010, Perez sent Dallas ASAC Andrews the Talamantes trace. Perez told the OIG that he understood that ATF Dallas would be handling the straw purchasers in Dallas identified from the traces.⁶¹ ASAC Andrews confirmed this view. He told the OIG that "there's no doubt" that ATF

⁵⁹ Ramirez said that he requested urgent traces on all 40 firearms. However, 37 of the firearms had to have the serial numbers restored before the traces could be completed. As explained below, ATF Laredo began receiving traces on the firearms with restored serial numbers in late January 2011.

⁶⁰ We did not find evidence, however, that Campbell collected 4473s on Talamantes' purchases until February 2011, around the time that Langward sent Campbell additional trace information concerning Talamantes.

⁶¹ We asked Perez about an e-mail that Campbell sent on November 9, 2010 to ASAC Andrews and Supervisor Hartman that Andrews forwarded to Perez the same day. In it Campbell wrote that "Laredo agents will prepare reports and will be tracing the guns today in hopes of getting us the straw purchasers." Perez said that Campbell's reference to straw purchases "absolutely" confirmed for him that ATF Dallas would be investigating the straw purchasers in Dallas.

Dallas was going to follow-up with the straw purchasers, and that the reason that ATF Laredo was sending the trace results to Dallas was so that ATF agents in Dallas could interview the straw purchasers. Perez stated that no one from ATF Dallas ever informed him that agents in Dallas would not be able to follow up on the traces because they were concerned about hurting a DEA investigation in Laredo.

Campbell, however, initially showed reluctance to open an investigation in Dallas. On November 17, 2010, Ramirez sent Campbell another e-mail notifying him that Talamantes had purchased a second firearm at the same time that he had purchased the firearm that had been traced, and that those facts provided a "[g]reat reason to go talk to him." Campbell demurred, however, and responded to Ramirez and Green: "I don't want to open something that will impact your case down there." Green reassured Campbell: "I think you are good to open a case. We have violations on both ends. I just want to see them prosecuted. Don't worry about who does it." Campbell responded, "I'll call you tomorrow, there is more to it." Campbell told the OIG that he did not recall what he meant by "there is more to it." Neither Campbell nor Green recalled additional discussion about the e-mail exchange.

We showed Green's e-mail exchange with Campbell to SAC Champion. He stated that he had not previously seen Green's e-mail and that his agents had not informed him that ATF Laredo was comfortable as early as November 2010 with Dallas proceeding to open a case associated with the firearms transfer. He stated that his staff originally told him that they should not proceed because of concerns with DEA's case. Champion told us that if ATF Laredo provided the "ok" and everyone was "on the same page" to start working it, ATF Dallas should have had no problem proceeding with its investigation.

According to Campbell, his hesitancy to proceed with an investigation was influenced in part by his belief, which turned out to be misplaced, that HIDTA was actively pursuing firearms violations in Dallas related to the activities of the Osorio brothers and their straw purchasers. Discussions between Campbell and HIDTA staff concerning HIDTA's role occurred in November and December 2010.

2. Communications with HIDTA

Campbell told us that after the November firearms transfer, DEA Task Force Officer Caldwell informed him that ATF agent Dean Simmons, who was assigned to ATF's HIDTA Group in Dallas, would be working with Caldwell on DEA's case against the Eduardo Mendoza-Robles drug trafficking organization as it related to activities in Dallas.⁶² As noted above, Mendoza was the drug-trafficker who had sought the firearms delivered by the Osorio brothers. Caldwell was assigned to DEA's HIDTA Group. Campbell said that his

⁶² Dean Simmons is a pseudonym.

discussions with Caldwell led him to believe "somewhat" that DEA's HIDTA Group in Dallas was "working" the Osorio brothers.

Caldwell denied that DEA in Dallas investigated the Osorio brothers. He told the OIG that "DEA does dope" and he "left the Osorios alone to be weapons traffickers," which he deemed to be ATF's responsibility to investigate.⁶³ He said that after the November firearms transfer he had no expectation that he would investigate the Osorio brothers and did not recall having discussions with ATF about follow-up with them. Simmons stated that aside from events around the time of the Osorio brothers' arrest in February 2011, he never received any assignments concerning the Osorio brothers.

There are contemporaneous ATF documents that are consistent with Campbell's explanation that he believed that Simmons and HIDTA would investigate the Osorio brothers after the firearms transfer. On November 18, 2010, Campbell e-mailed Simmons information that ATF Laredo agent Green had requested about a vehicle that Ranferi Osorio owned. Green told us that he requested the information in order to add information to N-Force about the firearms transfer. Additionally, less than a week later, on November 24, Campbell provided a submission to Hartman for a report that described ATF activities on the Southwest Border. Campbell described the November 2010 firearms transfer, the roles of the Osorio brothers and Morrison, and concluded by stating that "[t]he Dallas part of this element of the investigation is being conducted by ATF HIDTA who [sic] is part of an OCDETF [Organized Crime Drug Enforcement Task Force] case with DEA." The report also stated that "[t]he OSORIO brothers have ties to another Dallas Group III investigation [Montfort apartment] and an Oklahoma City firearms trafficking investigation [Reyes]."

Simmons told us that Campbell's submission was not accurate because the ATF's HIDTA Group was not investigating the Osorio brothers at the time. Simmons's supervisor on the HIDTA task force, Nicholas Barnes, agreed with this assessment.⁶⁴ Barnes said that he would have to approve for Simmons to investigate the Osorio brothers, and that he did not assign Simmons to investigate the Osorio brothers prior to Agent Zapata's death. Barnes stated that it was not HIDTA's mission to investigate straw purchasers, and that if Campbell's supervisor, Hartman, had consulted with him, he would have told Hartman that his case involved firearms trafficking that should be investigated by ATF Group III. Simmons told the OIG that he believed that Campbell sent him the Osorio vehicle information because Campbell possibly was trying to get him to work on his case. We did not find a return e-mail from Simmons to Campbell concerning Osorio's vehicle.

⁶³ Similarly, DEA Laredo agent Martinez stated that DEA Laredo did not investigate the Osorio brothers, and that he did not set any leads for DEA in Dallas to investigate them. He said that he presumed that ATF in Dallas would pursue the investigation because it involved a gun smuggling group in Dallas.

⁶⁴ Nicholas Barnes is a pseudonym.

On December 13, 2010, ASAC Andrews e-mailed Campbell and Hartman and inquired whether action had been taken on the Talamantes trace that ATF Laredo had sent in November. Andrews told the OIG that at the time he sent the e-mail he expected his agents to have finished interviewing Talamantes. Like Campbell, Hartman believed that HIDTA was handling the investigation of the group and should interview Talamantes, and he informed Andrews of that fact. He copied Simmons, but not Barnes, with his response, which read:

[Jesse], this needs to be pushed to [Dean Simmons] out at HIDTA. This case is a DEA case from Laredo w/ATF Dallas assisting. Once the players were identified, it was determined that [Dean] was working this group from a HIDTA angle. We have not interviewed the subject of the trace fearing to mess up something from the DEA case. We will do the interview if requested to do so by the case agents. I am not sure if [Simmons] has interviewed them or not.

Simmons responded by advising Hartman and Andrews that he had not received the trace in question and had not conducted any interviews. His e-mail did not address Hartman's statement that HIDTA was "working this group." Simmons told the OIG that Hartman's e-mail was inaccurate and that he was not conducting the investigation that Hartman described. However, Simmons said that he did not inform Hartman or Campbell of his views. After Hartman e-mailed the Talamantes traces to Simmons, Simmons responded "[Calvin] sent them too. Thanks. I'm gonna go talk to him." Simmons told the OIG that he could not recall whether his reference to "him" meant Campbell or Talamantes, and that he did not recall talking to Talamantes but may have done so.

Talamantes informed investigators in June 2011 that he recalled that agents questioned him in December 2010 about a firearm he purchased that was recovered in Mexico. Talamantes stated that he ceased purchasing firearms after this contact and that when he informed Ranferi Osorio about it, Osorio told him not to worry. Neither ATF, DEA, nor the FBI had a record of an interview with Talamantes in December 2010 or thereafter until June 2011. The OIG investigation was unable to determine who may have spoken to Talamantes in late 2010.

We received conflicting responses from senior managers at ATF's Dallas Field Division when we asked whether its HIDTA Group investigated the Osorio brothers. ASAC Andrews told us he recalled Hartman and Campbell informing him that Simmons, who was assigned to the ATF HIDTA Group in Dallas, was working with DEA's HIDTA Group and would be handling the follow-up investigation of the Osorio brothers. He said that he then contacted Simmons's supervisor at ATF's HIDTA Group, Barnes, who informed him that Simmons was not working on a case related to the November 9, 2010 firearms transfer and that it belonged to Campbell. Barnes told the OIG that he did not recall Andrews contacting him about ATF's HIDTA Group investigating the Osorio brothers, and that in meetings he attended during 2011 with Champion, Andrews, and Campbell, no one ever said to him that ATF HIDTA should have

been investigating the brothers. According to Barnes, he did not believe that there was any question that it was a Group III case. Andrews described the situation to the OIG as one where "Group III is trying to punt it to HIDTA and HIDTA is trying to punt it back." Andrews said that he may have received something back from Simmons after his inquiry about the Talamantes trace. He stated, however, that he recalled learning from Campbell around this time that [REDACTED]

We asked SAC Champion about his understanding of HIDTA's role. Champion stated that to his knowledge ATF agents at HIDTA did not investigate the Osorio brothers in December 2010, and that he had no recollection of receiving any information concerning the Osorio brothers between the November firearms transfer and ATF's participation in enforcement activity in late February 2011 following agent Zapata's death.

We also asked Campbell about an e-mail that ATF Senior Special Agent Erichson sent on December 15, 2010 to agents in Group III that stated Campbell was investigating Ranferi Osorio. The e-mail indicated that Erichson had been contacted by an ICE agent who was inquiring about the La Pryor seizure. Campbell stated that he had become frustrated because nothing was being done, and that by mid-December ATF was no longer deferring to DEA. Campbell said that he told the Laredo ATF agents that they were not going to "get anything" from HIDTA and to send him the information and he would follow up on the traces which, at that time, were limited to the three firearms that did not have obliterated serial numbers. ASAC Andrews told the OIG that he recalled that Campbell became frustrated that HIDTA had not been working on the traces from the firearms transfer and decided to start working on them himself. ASAC Andrews said that after ATF Laredo began forwarding Campbell the traces from the November 2010 firearms transfer, Campbell began working on them. Andrews said that by that time Campbell had learned that Simmons was not going to handle the traces.

However, Campbell said that he did not talk to the purchasers of any of the 40 weapons seized during the firearms transfer. He said that not all of the traces had arrived by January 2011, and that he had other responsibilities, including work on other cases and duties with the ATF Strategic Response Team (SRT). We asked about the Talamantes trace, which he received on November 17, 2010. Campbell said that Dallas agents did not interview Talamantes because they were waiting on the other traces to arrive, and that "they were not going to run out and talk to one guy." ATF documents show that the ATF Laboratory sent the first trace on the firearms with obliterated serial numbers to Ramirez on January 28, 2011 and that ATF Laredo forwarded the traces to Campbell as they arrived. The ATF Laboratory issued its final report on the firearms on February 17, 2011. Of the 40 firearms, Talamantes had purchased 12, Quinones 4, Morrison and Bueno 3 each, and Otilio Osorio 1.

3. Investigation of Morrison

ATF continued to collect information on Morrison during November and December 2010. On November 5, his purchases of two Draco handguns the preceding day appeared in an ATF multiple sales summary. ATF Dallas Group III Special Agent Lena Florence, who had been examining purchasers of Draco pistols, e-mailed Erichson on November 10, 2010 about Morrison's purchases of Dracos and his presence in the vehicle with the Osorio brothers following the firearms transfer.⁶⁵ Florence advised Erichson that she would keep him posted about new information she received.

On November 30, 2010, Langward e-mailed Hartman, Campbell, and other agents listing Morrison's purchases of 18 handguns, including his Draco purchases earlier in the month, and describing the trace that ATF Roswell agent Cole completed on 1 of Morrison's firearms that was seized at La Pryor. Langward wrote that there was no information on Morrison in N-Force and that agents in ATF's Intelligence Section were planning to interview him given that he currently did not appear to be under investigation. Langward told the OIG that he thought someone needed to talk to Morrison in light of his purchasing activity and trace report. However, he stated that he believed that an agent requested that the Intelligence Section not proceed with an interview because the agent was looking at Morrison and therefore that Section did not contact Morrison. Langward said he was not sure which agent made that request.

ATF Dallas agent Dennison received Langward's e-mail and informed Hartman that he was interested in being assigned to investigate Morrison. Hartman approved the assignment on the condition that Dennison check with other agents to ensure that he did not interfere with their investigations. Dennison contacted agents in Group III and received conflicting information from them about whether Morrison was being investigated. Dennison said that although the agents told him that Morrison was associated with an investigation into firearms trafficking to Laredo with which the agents had assisted, they had not documented anything about him and provided differing views on which agents were involved in the investigation. Dennison told the OIG that he was surprised Morrison apparently was linked to cases that were being investigated in Dallas and Laredo but he was not identified in N-Force based on these investigations.

Our review of ATF documents showed that Dennison exchanged e-mails with an agent from the Intelligence Section and expressed frustration about the confusion and lack of progress with Morrison. He wrote in one e-mail to the Intelligence Section agent that Campbell informed him that Erichson and Florence were handling the Morrison investigation, while Florence told him that Campbell was responsible for it. He also said that his impression was that Campbell and Florence did not want to run the risk of Dennison's investigation

⁶⁵ Lena Florence is a pseudonym.

compromising other ATF cases. Our interviews with agents in Group III and review of contemporaneous documentation revealed that Morrison was not being investigated prior to agent Dennison's involvement.

Notwithstanding the lack of clarity concerning Group III's approach to Morrison, Dennison decided to proceed to collect information about him. On December 9, 2010, he requested searches for Morrison in various databases, including DEA's Narcotics and Dangerous Drugs Information System (NADDIS).⁶⁶ The results were negative. Dennison said that he started trying to locate Morrison in January 2011 and began collecting additional information about him, such as employment information. He also decided to visit FFLs to determine if Morrison had been making firearms purchases that were not required to be reported to ATF.

Dennison opened a case on Morrison in N-Force on January 27, 2011. He said that he began to collect Form 4473s for Morrison from FFLs and that ATF regulations required him to open a case because he was taking property (the 4473s) into custody. Dennison said that he was making plans to interview Morrison but had a difficult time locating him because he had provided a fictitious address on his 4473s. After finding his correct address, Dennison said he visited Morrison's home twice in February 2011 without meeting him. Dennison said he learned that Morrison worked at night.

On February 23, 2011, Dennison located Morrison in the backyard of one of Morrison's neighbors talking with two or three Hispanic males. According to Dennison's Report of Investigation, Dennison advised Morrison that he was aware that he had acquired 24 assault weapons in approximately a 4-month period beginning in July 2010. Morrison admitted to purchasing the firearms on behalf of other persons whom he met at gun shows and otherwise did not know. At the conclusion of the interview Dennison advised Morrison that he believed that he had not been completely truthful in his responses. Morrison admitted he had not been truthful and asked if he could talk with Dennison at a later time. Dennison provided his telephone number to Morrison.

After interviewing Morrison, Dennison wrote down the license plate number of a vehicle that was parked at Morrison's neighbor's home and ran that information, as well as the address of the neighbor, through intelligence databases when he returned to his office. When the name for both the address and vehicle came back as "Osorio," he ran the name through N-Force and found the case from Laredo. Dennison also viewed a photograph of Otilio Osorio and recognized him as one of the Hispanic males in the neighbor's backyard.

Dennison's emerging investigation of the Osorio brothers was cut short, however, by events related to Agent Zapata's murder, which had occurred earlier that month, as we describe more fully below. Dennison told the OIG that

⁶⁶ NADDIS is a database of DEA reports and drug enforcement records, including records on individuals.

he would have continued to collect information on the Osorio brothers after coordinating with agents in Laredo and would not have "dropped" the matter.

4. Participation in Operation Noble Hero

In response to the death of Agent Zapata and the shooting of Agent Avila on February 15, 2011, U.S. law enforcement, including approximately 25 U.S. Attorney's Offices, DEA, ATF, U.S. Marshals, ICE, Customs and Border Protection, and state and local agencies, participated in targeted enforcement actions against the Zeta cartel across the United States. These efforts were code named "Operation Noble Hero" and involved arrests and seizure of drugs and property.⁶⁷ DOJ and DHS established an inter-agency work group to coordinate planning for the operation. ATF Headquarters provided representatives from its Office of Field Operations, Assistant Director Mark Chait and Deputy Assistant Director William McMahon.

Within the ATF Dallas Field Division, DEA, ATF, and ICE carried out enforcement actions on February 24, 2011, with ATF contributing 34 agents. These activities resulted in 22 arrests and the seizure of \$2 million in cash, 300 pounds of marijuana, 9 ounces of cocaine, and 24 firearms.

DEA HIDTA Task Force Officer Caldwell and ATF agents Simmons and Colleen Graham visited the Osorio residence on February 24 as part of Operation Noble Hero and conducted a search with the permission of the Osorio brothers' mother.⁶⁸ Graham said that Caldwell requested assistance with the visit on short notice after agents had served two search warrants at other locations earlier in the day. According to a DEA Form 6 (Report of Investigation), ATF and DEA agents interviewed Osorio and conducted a search of the Osorios' residence "in reference to a delivery of (40) assault weapons with obliterated serial numbers, that had previously occurred on November 9, 2010." Simmons said that before visiting the Osorio residence he knew about the November firearms transfer and believed he probably consulted with Campbell about the Osorios. Graham stated that she did not know about the Osorio brothers' firearms trafficking activities at the time of the search. Neither ATF agent had received Langward's or Erichson's e-mails concerning the Osorio brothers that described other evidence such as trace information linking them to firearms trafficking activities.

Both Osorio brothers were at the residence and denied to agents that they were trafficking firearms to Mexico. Agents found 10 firearms in Ranferi Osorio's bedroom and numerous receipts for prior firearms purchases. When asked about his numerous firearms purchases, Ranferi Osorio responded that he enjoyed working on guns and going to the range to shoot them. Otilio Osorio

⁶⁷ Colleen Graham is a pseudonym.

Some agencies alternatively referred to it as "Operation Bombardier."

⁶⁸ Eight other agents and task force officers participated in the search.

also told the agents that he enjoyed working on guns. Both Osorio brothers stated that they sold firearms as well.

Simmons told the OIG that the Osorio brothers were not arrested nor were their firearms seized because probable cause was lacking. He also said he thought that the U.S. Attorney's Office would not support the prosecutions. Simmons said that to the best of his knowledge, firearms traffickers and straw purchasers were not prosecuted in the Northern District of Texas, though he believed that on one or two occasions ATF had followed firearms traffickers to the border with their firearms and that those traffickers had been prosecuted. Graham stated that she recalled having a brief discussion with Simmons while at the Osorio residence about whether they could seize the firearms and that they decided against it. According to Simmons and Graham, the firearms that the agents found did not have obliterated serial numbers, nor did the Osorio brothers have criminal records that would have prohibited them from possessing firearms.

Caldwell told the OIG that his DEA supervisor wanted to seize the Osorio brothers' firearms but had been told by ATF that they did not have any legal basis to take the firearms. Caldwell was unsure whether Simmons or Graham, or both, provided this information to his supervisor.

We found that the agents reached their legal conclusion regarding probable cause and the likely views of the U.S. Attorney's Office without consulting anyone in that office about whether to seize the firearms or arrest the Osorio brothers. According to the Criminal Chief of the U.S. Attorney's Office, Joel Maddox, if ATF agents had contacted his office and described the facts that ATF's Dallas Field Division had collected about the Osorio brothers, his office would have supported the seizure of their firearms. He stated that there was probable cause to seize the Osorio brothers' firearms on February 24, 2011, just as there was when the Osorio brothers were arrested 4 days later.

III. Events Following ATF's Tracing of the Osorio Firearm on February 25, 2011

The discovery and tracing of the Osorio Firearm following the death of Agent Zapata changed ATF's approach to the Osorio brothers and Morrison. The trace of the Osorio Firearm was completed on February 25, 2011 and the Osorio brothers and Morrison were arrested just 3 days later, on February 28, 2011.

SAC Champion told the OIG that ATF did not have an investigation of the Osorio brothers prior to late February 2011. Hartman also told the OIG that no agent from Group III was assigned to investigate the Osorio brothers prior to Agent Zapata's murder. In addition, ATF had not contacted the U.S. Attorney's Office prior to February 26, 2011 about the Osorio brothers or Morrison.

A. Notification of the ATF Dallas Field Division and Arrest Preparations

ASAC Andrews told the OIG that ATF's Attaché in Mexico City contacted him at approximately 9:30 p.m. on Friday, February 25, 2011 and informed him that one of the weapons used in the Zapata/Avila shooting had been purchased in the Dallas area. ASAC Andrews said that he learned shortly thereafter from Dallas ATF staff that the purchaser, Otilio Osorio, had been identified during the firearms transfer in November 2010.

ASAC Andrews contacted Hartman that evening and told him that he needed agents to report over the weekend because an agent had been killed and that one of the firearms used in the attack was traced to the Dallas area. Andrews said that Hartman told him that the agents could wait until Monday and that there is "no rush." Andrews stated that he decided at that point that he did not want Hartman to be involved in planning the ensuing arrest operations. According to Andrews, after hearing Hartman's reasoning "I was done with him . . . He didn't get the picture; nor did I have time to explain it to him. I didn't want him to be a derailment, so to speak."

Instead, ASAC Andrews reached out to other agents in Group III for assistance. He stated that he contacted Campbell at home and that Campbell came into the office that night. ATF assisted in establishing a command post at the Lancaster Police Department the next day and five agents from Group III worked with agents from the FBI, ICE, HIDTA, and Texas police officers to prepare for the arrest of the Osorios and Morrison.

According to Hartman, he recalled receiving Andrews's telephone call and contacting Campbell to assist Andrews. Hartman said that he did not work with the Group III agents at the command post the following day but instead worked from his office. We were not able to corroborate his claim.⁶⁹ On Saturday, February 26, 2011, Campbell met Assistant U.S. Attorney (AUSA) Curt Harden at the U.S. Attorney's Office for the Northern District of Texas.⁷⁰ After reviewing the evidence together the U.S. Attorney's Office decided to seek search and arrest warrants for the Osorio brothers and Morrison. Harden said that there was no discussion with ATF Dallas about the need to contact ATF or DEA in Laredo before proceeding.⁷¹

⁶⁹ Andrews said that Hartman was not in the office on Saturday morning before Andrews went to the Lancaster Police Department. AUSA Curt Harden said that he did not have contact with Hartman during the weekend. Dennison worked through the evening on Saturday and also said he did not recall seeing Hartman in the office. Dennison said that Hartman telephoned him and instructed him to report to the Lancaster Police Department. Dennison said he expected Hartman to assist over the weekend given the importance of the operation.

⁷⁰ Curt Harden is a pseudonym.

⁷¹ In comments ATF submitted after reviewing a draft of this report, it stated that a March 2, 2011 e-mail sent by the AUSA responsible for the Laredo DEA [REDACTED] case to the AUSA in Dallas handling the Osorio matter supports the explanations provided by ATF agents in Dallas (Cont'd.)

Harden told the OIG that he and Campbell worked through Saturday night and Sunday, along with Dennison for part of this period, to prepare the necessary court filings. Campbell drafted affidavits to support a criminal complaint against the Osorio brothers and a warrant for the search of their home. Dennison did the same for Morrison.

The affidavits described the firearms that the Osorio brothers and Morrison had purchased, the firearms transfer in November 2010, [REDACTED], and, in the case of Campbell's affidavits, that testing showed that the Osorio Firearm was used in the assault that resulted in Agent Zapata's death. The affidavits also described events that occurred after the November 2010 firearms transfer that, SAC Champion told us, helped to establish probable cause that previously was lacking. In the case of the Osorio brothers, Campbell's affidavits described agents' observations at the Osorio home on February 24, 2011. Dennison's affidavits similarly described his interview with Morrison on February 23, 2011.

The OIG asked Campbell what had changed with regard to ATF's assessment of probable cause since the November firearms transfer. He stated that the circumstances were different due to the death of Agent Zapata and the willingness of the U.S. Attorney's Office to pursue charges.

Harden told the OIG that he also recalled receiving a telephone call at home that Saturday from an Assistant Deputy Chief in the DOJ Criminal Division's Narcotics and Dangerous Drugs Section in Washington, D.C., who requested an update on events. Harden stated, however, that the Assistant Deputy Chief did not request that he coordinate with her, and he did not share the criminal complaints with her before they were filed.

ASAC Andrews told the OIG that he worked through Sunday on preparations for execution of the search and arrest warrants. He was assisted by other agents from Group III and ATF's tactical operations group along with

about why they had been reluctant to proceed with a follow-up investigation involving the Osorio brothers: because they felt that doing so would risk compromising the DEA Laredo investigation. The Laredo AUSA wrote the March 2 e-mail after reading in the local Laredo newspaper that the Osorios had been arrested. The paper referenced the November 2010 seizure. In the e-mail, the Laredo AUSA explained to the Dallas AUSA that she believed the seizure was tied to Laredo's OCDEF investigation, [REDACTED]

[REDACTED] She wrote to the Dallas AUSA to determine if the Osorios were being charged with the November seizure and, if so, to identify any information that was disclosed [REDACTED]

[REDACTED]

We interviewed the AUSA who wrote the March 2, 2011 e-mail. She told us that she did not have concerns with ATF proceeding with any investigation of the Osorios, whom she was not aware of until reading the Laredo newspaper. She said that her primary concern was whether the office in Dallas intended to indict any of the subjects of her investigation in Laredo [REDACTED]. The AUSA told us that she was not privy to any discussions about whether to arrest the Osorios following the November 2010 seizure.

representatives of other law enforcement agencies, including ICE and the Lancaster Police Department.⁷²

ATF Dallas kept ATF Headquarters informed about unfolding developments. ASAC Andrews provided a briefing paper to SAC Champion on Sunday afternoon that described the November 2010 firearms transfer, Dennison's investigation of Morrison, and the operation now scheduled for the next morning, February 28, 2011. SAC Champion forwarded the briefing paper to McMahon at ATF Headquarters via e-mail the same day.

Harden appeared on Sunday evening, February 27, before a magistrate judge who authorized warrants for the arrest of the Osorio brothers and Morrison and for the search of the Osorio brothers' home. The judge determined that probable cause was lacking to search Morrison's residence.

B. Arrests and Interviews of the Osorio Brothers and Morrison

On Monday, February 28, 2011, approximately 40 agents and police officers participated in the arrests of the Osorio brothers and Morrison. They were taken into custody without incident. The Osorio brothers were arrested at their home and Morrison at his place of employment. The search of the Osorio residence revealed 6 firearms, with 5 of the 10 firearms that agents found but did not seize during their search 4 days earlier, on February 24, 2011, missing. Two of the missing firearms were later recovered in Mexico. Agents also found ammunition, ammunition clips, and tools used to obliterate serial numbers.

After being read their Miranda rights, the Osorio brothers and Morrison agreed to be interviewed without an attorney present. Agents interviewed the Osorio brothers separately at the Lancaster Police Department. Morrison was interviewed at the scene of his arrest. During their interviews the Osorio brothers denied trafficking firearms to Mexico or being present at the [REDACTED] on November 9, 2010. Morrison confessed to buying firearms for Ranferi Osorio, and sometimes for Otilio Osorio.

Agents also located and interviewed three other straw purchasers for the Osorio brothers: Bueno, Quinones, and Talamantes. Bueno and Talamantes confessed to straw buying for the Osorio brothers, while Quinones denied purchasing firearms for them.

By the end of the day on February 28, Campbell and Dennison prepared Significant Information Reports (SIRs) for ATF Headquarters that described the arrests of the Osorio brothers and Morrison. ATF's weekly reports to the Offices of the Attorney General and Deputy Attorney General February 28 and March 7, 2011, did not describe the arrests.

⁷² Andrews said he informed an ASAC at DEA in Dallas about the Osorio Firearm and invited DEA to participate over the weekend in planning another interview with the Osorio brothers but that the ASAC declined. Andrews said that he did not describe plans to "hit the houses" to the ASAC.

C. The Arrest of Erik Gonzalez

Agent Zapata's death also led to the prompt arrest of Erik Gonzalez, one of the traffickers responsible for the shipment of weapons that had been seized in La Pryor, Texas, on August 7, 2010, and that included firearms purchased by Ranferi Osorio, Morrison, and Quinones. ATF Roswell Agent Cole told the OIG that following Zapata's death his supervisor contacted him and told him he needed to "wrap up" his investigation.

Cole discovered that Gonzalez had an outstanding misdemeanor warrant for traffic violations and, on March 2, 2011, Cole went to Gonzalez's place of employment with a local police officer and they took Gonzalez into custody. Cole interviewed Gonzalez that day at the Hobbs, New Mexico Police Department. Gonzalez confessed to purchasing firearms for his brother Efrein, whom he believed worked for the Zetas.

As described earlier in this report, Gonzalez also stated that the Zetas had threatened him after the firearms seizure at La Pryor, and that his uncle in Mexico went missing 3 days after the seizure and had not been located. He told the agents that he believed his uncle had been killed in retaliation for the lost load of weapons.

D. Indictments, Pleas, and Sentencing

Following their arrests, the Osorio brothers and Morrison were indicted by a grand jury on March 23, 2011, on multiple charges, including making false statements to acquire firearms, conspiracy, and possession of firearms with obliterated serial numbers. On May 4, 2011, the grand jury returned a superseding indictment that added five straw purchasers as defendants: Kevin Bueno, Luis Carabajal, Angel Monroy, Rosendo Quinones, and Eder Talamantes.⁷³ All of the defendants entered pleas of guilty in November 2011.⁷⁴

Ranferi Osorio and Morrison were sentenced in February 2012, to terms of incarceration of 120 months and 30 months, respectively. Otilio Osorio was sentenced in March 2012 to 84 months. The remaining defendants received sentences ranging from 24 months of probation to terms of incarceration of 1 year.

⁷³ According to AUSA Harden, the U.S. Attorney's Office declined prosecution on Garcia and Pascal due to the small number of firearms they trafficked and lack of evidence.

⁷⁴ The Osorio brothers pled guilty to Making a False Statement, 18 U.S.C. § 924(a)(1)(A); Conspiracy to Make a False Statement, 18 U.S.C. § 371; and Possession of a Firearm with an Obliterated Serial Number, 18 U.S.C. § 922(k). Morrison pled guilty to Making a False Statement, 18 U.S.C. § 924(a)(1)(A); and Conspiracy to Make a False Statement, 18 U.S.C. § 371. Kevin Bueno pled guilty to Making a False Statement, 18 U.S.C. § 924(a)(1)(A); and Aiding and Abetting, 18 U.S.C. § 2. Rosendo Quinones and Eder Talamantes pled guilty to Making a False Statement, 18 U.S.C. § 924(a)(1)(A); and Conspiracy to Make a False Statement, 18 U.S.C. § 371. Luis Carabajal and Angel Monroy pled guilty to Making a False Statement, 18 U.S.C. § 924(a)(1)(A).

Erik Gonzalez was indicted by a grand jury in Del Rio, Texas on April 13, 2011 to a charge of Aiding and Abetting Smuggling Goods from the United States, 18 U.S.C. § 554. He pled guilty to the charge on July 12, 2012, and was sentenced in December 2012 to 57 months of incarceration. A warrant is pending for the arrest of Efrein Gonzalez.

As of February 2017, four Zeta members have pled guilty in the U.S. District Court for the District of Columbia to murder and other charges related to agent Zapata's murder and the shooting of agent Avila and are awaiting sentencing. Three other defendants have been extradited since 2015 and have cases pending in the District of Columbia.

IV. Headquarters' Knowledge of the Osorios and Morrison

Our investigation also found that that DOJ, ATF, DEA, and FBI Headquarters were not notified of the firearms trafficking activities of the Osorio brothers and Morrison prior to the tracing of the Osorio Firearm on February 25, 2011. The SIR that the Laredo Field Office sent to ATF Headquarters on November 10, 2010 describing the firearms transfer the day before did not mention the Osorio brothers or Morrison by name. The SIR stated that "two individuals showed up and dropped off 40 assault rifles in two duffel bags." We found that ATF Headquarters was notified of the Osorio Firearm trace results on February 25, and that DOJ Headquarters learned of the results no later than February 26, 2011.

In addition, ATF did not seek wiretaps in their investigations of the Osorio brothers and Morrison and therefore wiretap applications were not submitted to DOJ's Criminal Division for review and authorization. [REDACTED]

[REDACTED]

V. Timeline

Below is a timeline that presents key events in the Osorio brothers and Morrison matters.

Timeline of Events Related to the Osorio Brothers and Morrison

2010

JUNE

- 15: Eagle Pass seizure
- 17: Discovery of Ranferi Osorio luggage tags
- 25: Erichson begins to collect information on Ranferi Osorio

AUGUST

- 7: La Pryor seizure

SEPTEMBER

- 15: Traces from La Pryor seizure are linked to Ranferi Osorio, Morrison, and Quiñones

OCTOBER

- 7: An FFL tip identifies Osorios, Morrison, and other purchasers as suspicious
- 10: **Otilio Osorio purchases Osorio Draco 7.62 pistol at the Dallas-Ft. Worth Gun Show**

NOVEMBER

- 9: Osorios deliver 40 firearms to an ATF informant (only 3 of the 40 firearms have visible serial numbers; the rest are obliterated)
- 10: ATF initiates traces on three firearms with visible serial numbers; results return within a week

DECEMBER

- 9: Agent Dennison initiates database inquiries on Morrison

2011

JANUARY

- 11: Agent Dennison begins to collect additional information on Morrison and contacts FFLs about his firearms purchases
- 28: Traces begin to arrive for the 37 firearms with obliterated serial numbers that the Osorios delivered to ATF's informant on Nov 9

FEBRUARY

- 23: Agent Dennison interviews Morrison at his home
- 24: Operation Noble Hero; agents visit Osorio residence
- 25: ATF learns that Otilio Osorio purchased firearm used at the scene of the shooting of Agents Zapata and Avila
- 28: Arrests of Osorios and Morrison

VI. OIG Analysis

In this section, we analyze ATF and DEA's contacts with the Osorio brothers and Morrison prior to their arrests on February 28, 2011. We examine whether agents: (1) witnessed the unlawful transfer of firearms and failed to seize them despite having legal grounds to do so; (2) neglected to seize firearms in the possession of the Osorio brothers and Morrison despite having legal grounds to do so; (3) failed to take appropriate actions to prevent Otilio Osorio's trafficking of the Osorio Firearm; and (4) failed to investigate the Osorio brothers and Morrison in a timely manner, particularly following the Osorio brothers' delivery of 40 high-powered firearms [REDACTED] in November 2010.

Overall, we identified numerous problems with ATF's assimilation of information concerning the Osorio brothers and Morrison and the timeliness of ATF's response to mounting evidence that they were committing firearms offenses. We found that some delays resulted from a failure to communicate with the U.S. Attorney's Office and DEA, including HIDTA, and due to miscommunications between ATF's own agents. We did not find evidence that the FBI, ATF Headquarters, DOJ Headquarters, or staff from the U.S. Attorney's Office for the Northern District of Texas were alerted to the criminal activities of the Osorio brothers and Morrison before the Zapata/Avila shooting on February 15, 2011.

A. Actions Regarding Firearms Seizures

Our investigation did not identify circumstances where agents witnessed the unlawful transfer of firearms and failed to seize them. We determined that ATF agents learned of the Osorio brothers' and Morrison's firearms purchases after they occurred and agents therefore were not in a position to seize the firearms as the Osorio brothers and Morrison took custody of them.⁷⁵ We found that an important source of information for ATF agents in the Dallas Field Division concerning firearms purchases was intelligence analyst Langward, who on multiple occasions alerted agents to the Osorio brothers' and Morrison's firearms purchases. The information that Langward disseminated was historical, however, and came from review of multiple sales reports, traces, and, on one occasion, from an FFL who reported suspicious purchases by members of the Osorio organization after they had occurred.

We found that in the three instances in which agents participated in firearms deliveries or observed firearms transfers, the agents seized the firearms. In November 2010, ATF and DEA agents observed the Osorio brothers deliver 40 firearms [REDACTED], 37 of which had obliterated serial numbers. We found that agents maintained continuous surveillance on these

⁷⁵ We discuss below when probable cause ripened to seize firearms from the Osorio brothers and Morrison as well as the timeliness of ATF's investigation of these individuals.

firearms until they were seized in Laredo, Texas, the same day that the Osorio brothers [REDACTED]. Similarly, in the Reyes case, ATF agents participated on two occasions in deliveries to Reyes of firearms that agents also later seized. On both occasions agents [REDACTED] that allowed the agents to track Reyes' [REDACTED] while attempting to maintain continuous surveillance until the firearms were recovered.

We also found that early in both the Reyes and Gonzalez investigations, agents believed that the firearms purchases they observed were lawful and therefore lacked probable cause to conduct seizures. ATF agents, as well as AUSA Vaughn from the U.S. Attorney's Office for the Western District of Oklahoma, told the OIG that the purpose of the first firearms delivery to Reyes was to determine what Reyes would do with the firearms and that the firearms sales to him were lawful. In their view, probable cause did not ripen until it was apparent that Reyes was selling firearms to traffickers who were transporting the firearms to the border with Mexico, at which time the firearms were seized. Given that the law requires probable cause to seize firearms, we found that the agents' and AUSA's beliefs were reasonable under the circumstances.

Similarly, Agent Cole also stated that probable cause was lacking to seize the firearms that the Gonzalezes purchased in July 2010 and that the agent observed being loaded into a vehicle at the Gonzalezes' home on July 29, 2010. Agent Cole stated that there was nothing he could have done to prevent the Gonzalezes from purchasing and possessing their firearms because they had not committed any crimes and had legally purchased the firearms. He also stated that he decided to break off surveillance at the Gonzalezes' home because the firearms he was tracking had been obtained legally and it did not appear that the Gonzalezes were going to move them. Again, we found that the agents' beliefs were reasonable under the circumstances.

We identified one instance, however, where we believe ATF had both the legal authority and opportunity to take firearms in the Osorio brothers' possession, yet failed to seize them. We determined that the cause of this failure was a lack of communication with the U.S. Attorney's Office and insufficient information sharing between ATF Group III and HIDTA. On February 24, 2011, 4 days prior to the arrests of the Osorio brothers and Morrison, agents visited the Osorio residence as part of Operation Noble Hero and conducted a search after receiving permission from the Osorio brothers' mother. The agents found 10 firearms in the bedroom of Ranferi Osorio, including AK-47 style firearms, as well as receipts for other firearms. Some of these firearms were ones typically favored by drug cartels and the same type found in: (1) the Eagle Pass seizure and purchased by Ranferi Osorio's acquaintance, Edna Pascal; (2) the La Pryor seizure and purchased by Ranferi Osorio and Morrison; and (3) the Laredo seizure and purchased by Talamantes. By the time agents returned to arrest the Osorio brothers on February 28, 2011, 5 of the 10 firearms were gone, and 2 of those were later recovered at a crime scene in Mexico.

ATF agents Simmons and Graham both told the OIG that based on what they described as limited information known to them at the time about the Osorio brothers, they did not believe that there was probable cause to seize firearms at the Osorio residence during Operation Noble Hero. Graham stated that she did not know about the Osorio brothers' firearms trafficking activities at the time of the search; however, Simmons was aware of the Osorio brothers' participation in the November 2010 firearms transfer and believed he had previously spoken with Campbell about the Osorios. According to Simmons, his reluctance to seize the firearms stemmed from the lack of apparent firearms violations and what he believed were the prosecution practices of the U.S. Attorney's Office for the Northern District of Texas in firearms cases. Simmons said that the Osorio brothers were not prohibited from owning firearms and to the best of his knowledge "no one was prosecuted unless they followed the load of guns all the way down to the border and took it down at the border."

However, we found that the ATF agents who visited the Osorio residence did not confer with the U.S. Attorney's Office, either directly or through a supervisor, about whether to seize the firearms or arrest the Osorio brothers. According to the Criminal Chief of the U.S. Attorney's Office for the Northern District of Texas, Maddox, based on the totality of information available to ATF about the Osorio brothers, his office would have supported the Osorio brothers' arrests and the seizure of their firearms after the firearms transfer in November 2010. In Maddox's view, the Osorio brothers could have been arrested and their firearms seized as well, following the consent search of their residence during Operation Noble Hero in February 2011.

We also determined that the affidavits that were used to establish probable cause for the arrest of the Osorio brothers and the search of their home on February 28, 2011 relied heavily upon facts that were known within ATF Group III at the time of Operation Noble Hero just 4 days earlier. Campbell's affidavits described the preparations for the November 2010 firearms transfer, including the Osorio brothers' delivery of the firearms with obliterated serial numbers [REDACTED], the seizure of the firearms in Laredo, and the search during Operation Noble Hero on February 24, 2011. According to Campbell's affidavits, during the November 2010 firearms transfer "[t]he CI spoke with the suspects as the guns were being loaded and clearly established that the suspects knew the firearms were being trafficked to Mexico." The affidavits also stated that the Osorio brothers indicated that they both were involved in manufacturing and selling firearms and that "[a] query of the ATF system indicated that neither Otilio or [sic] Ranferi OSORIO possess a Federal Firearms license to engage in the business of selling, manufacturing, importing or exporting firearms." The only information that was not available to ATF during Operation Noble Hero and that subsequently was included in Campbell's affidavits was the existence of the Osorio Firearm and its linkage to the Zapata/Avila shooting.

Moreover, other facts not mentioned in the affidavit, yet known to agents in Group III, could have been used to further support probable cause to seize the firearms found in Ranferi Osorio's bedroom, including:

- Osorio's relationship to Pascal and the seizure of her firearms at Eagle Pass, Texas (near the border with Mexico) as well as those of her cousin, Garcia;
- the short "time to crime" of the Pascal and Garcia firearms;
- the discovery of Ranferi Osorio's luggage tags in a duffel bag of firearms with obliterated serial numbers seized at Eagle Pass, including the firearms that Pascal and Garcia purchased; and
- two firearms Ranferi Osorio had purchased were seized at La Pryor, Texas (also near the border with Mexico), and had obliterated serial numbers and a short "time to crime."

We believe that these facts would have contributed to establishing probable cause to believe that the firearms at the Osorio residence were intended to be used or involved in a violation of federal firearms laws (e.g., knowing possession of a firearm with an obliterated serial number; unlawful exportation), and that therefore the firearms could have been seized at that time. We found, however, that Agents Simmons and Graham had not been informed of these facts prior to their visit to the Osorio residence which, as we described above, occurred on short notice.

B. Preventing the Trafficking of the Osorio Firearm

Our investigation determined that ATF had sufficient justification to question Ranferi Osorio and Morrison prior to October 10, 2010, the date that Otilio Osorio purchased the Osorio Firearm from an FFL at the Dallas-Fort Worth Gun Show. According to Otilio Osorio, the firearm shipped to Mexico within 2 weeks following his purchase, most likely on October 23.

We found that DEA first obtained information about the Osorio brothers and Morrison during the firearms transfer on November 9, 2010, and therefore had no information about them prior to October 10, 2010. In contrast, ATF's Dallas Field Division had amassed a significant amount of information prior to October 10, 2010 indicating that Ranferi Osorio and Morrison could be committing firearms offenses and possibly were involved in trafficking firearms to Mexico.

First, during July and August 2010 firearms seized at Eagle Pass, Texas, in connection with ATF's Reyes investigation were linked to Ranferi Osorio. Luggage tags bearing his name were found in one of the duffel bags that contained firearms with obliterated serial numbers, and traces on the firearms showed that Edna Pascal, and her cousin, Angela Garcia, had purchased 13 of the 45 firearms that were seized at Eagle Pass. The "time to crime" on the firearms that Pascal and Garcia purchased was less than 2 weeks for all of the firearms, and only 2 days for some of the firearms. We found that an agent

from the Oklahoma City field office, Ramsey, alerted Senior Special Agent Erichson about Osorio's luggage tags and that Pascal and Garcia had addresses in the same city where Osorio lived – Lancaster, Texas. In response, Erichson began to collect information on Ranferi Osorio, Pascal, and Garcia, including a search of public records that showed that Pascal shared a common address with the Osorios. In August 2010, Intelligence Analyst Langward also noted from multiple sales reports that Morrison had made numerous handgun purchases. An ATF multiple sales report from that month further revealed that Ranferi Osorio had purchased three pistols.

Second, in mid- and late September 2010, Langward and ATF agents in Dallas and Roswell, New Mexico, learned of traces from the La Pryor seizure that identified Ranferi Osorio and Morrison as the purchasers of 3 of the 23 seized firearms. The serial numbers on their firearms (two for Ranferi Osorio and one for Morrison) were obliterated and required restoration before the traces could be completed. In addition, the "time to crime" on the firearms, as with those for Pascal and Garcia in the Eagle Pass seizure, was less than 2 weeks, and the firearms were of a type preferred by Mexican drug cartels (*i.e.*, DRACOs and WASR 10s). According to ATF guidance, traces with a short "time to crime" and multiple sales of firearms considered "weapons of choice" for drug trafficking organizations are indicative of gun trafficking and straw purchasing.

Third, e-mails from Langward in late September 2010 informed agents from ATF Group III, including Hartman and Erichson, of Morrison's firearms purchases (15 7.62 caliber pistols between August and September 2010). ATF multiple sales reports identified four other firearms that Morrison purchased. On September 21, 2010, Langward advised his colleagues, again including Hartman and Erichson, that Ranferi Osorio may be associated with other subjects who may be involved in firearms trafficking to Mexico.

In addition, 3 days prior to the October 10, 2010 purchase of the Osorio Firearm, an FFL informed Langward of "suspicious purchasers," including Ranferi Osorio, Otilio Osorio, and Morrison. The purchases in question involved 42 firearms since July 2010. Of the 42 weapons, Ranferi Osorio acquired 13, Morrison 9, Talamantes 8, Quinones 7, and Otilio Osorio 5. All of the purchases were in cash and were of firearms favored by drug cartels. Cash sales are another factor that ATF guidance identifies as indicative of gun trafficking and straw purchasing.

ATF's information on Otilio Osorio was limited, however. In addition to the information from the FFL above, a multiple sales report on September 30, 2010 showed he purchased two Draco pistols. Erichson's public records request on Edna Pascal in June 2010 showed that Otilio Osorio listed the same address as his brother Ranferi and Pascal.

We believe that the facts above establish a pattern that suggested that Ranferi Osorio and Morrison were trafficking firearms with obliterated serial numbers to Mexico. The traces, prevalence of obliterated serial numbers, short

"time to crime," cash purchases, and type of firearms are factors ATF guidance identifies as indicative of such criminal conduct. We believe that the facts various agents in ATF had gathered concerning Ranferi Osorio and Morrison by late September or early October 2010 justified questioning them or taking other investigative steps within a reasonable time about their firearms purchases, which should have resulted in a full investigation no later than immediately after the firearms transfer in November 2010 and resulted in arrests.

Agents from ATF, however, did not contact the Osorio brothers and Morrison until late February 2011. (We analyze in sub-section IV.C. below the delays in the investigation of the Osorio brothers and Morrison). We found that the two agents within Group III with the most knowledge about Ranferi Osorio and Morrison prior to the November 2010 firearms transfer, Erichson and Group III Supervisor Hartman, failed to offer persuasive explanations justifying ATF's inaction in September and October 2010. Both were aware at the time of trace results linking Ranferi Osorio and Morrison to weapons seized at La Pryor; the Ranferi Osorio luggage tags from the Eagle Pass seizure; the tip from the FFL regarding suspicious purchases by the Osorio brothers and Morrison; and Langward's reporting, including descriptions of Morrison's firearms purchases and that Ranferi Osorio was a person of interest. Erichson also added Ranferi Osorio's name to N-Force in his Montfort apartment case, along with Pascal and Garcia, who had purchased firearms that were seized at Eagle Pass with Ranferi Osorio's luggage tags.

We believe that the information available to Erichson about Ranferi Osorio and Morrison should have led to his making additional inquiries about them or taking other steps to ensure that an agent within Group III investigated them. Erichson told the OIG that he could not recall why he did not consider interviewing Ranferi Osorio after traces came back from the La Pryor seizure in September 2010, and that he was not investigating Morrison. Erichson also did not follow up directly with the FFL who reported suspicious purchases by the Osorio brothers and Morrison in October 2010.

When we asked Hartman whether anyone from Group III was investigating Ranferi Osorio or Morrison at the end of September 2010, he responded, "no." He stated that the responsibility for any follow-up investigation of them fell in the first instance to Agent Cole in New Mexico and agents in the Oklahoma City ATF office. Our review determined, however, that other ATF agents outside of Group III never intended to investigate Ranferi Osorio or Morrison and that this information about their intentions was readily available to Hartman if he had inquired to find it out. We believe that Hartman should have been proactive in ensuring that the leads that ATF had received about Ranferi Osorio and Morrison were investigated. We reject Hartman's explanation that Ranferi Osorio's and Morrison's relationship to the investigations in New Mexico and Oklahoma excused his failure to ensure that an agent within Group III was following up on them, including deconflicting with agents in other ATF field divisions as necessary. Ranferi Osorio and Morrison were both located near Dallas and the evidence known to Hartman about them

demonstrated a high probability that they were trafficking firearms to Mexico. Their activities plainly were within Group III's jurisdiction. As the head of ATF's only firearms trafficking group in Dallas, Hartman had a responsibility to ensure coordination of ATF resources to investigate Ranferi Osorio and Morrison. Given his supervisory duties, we believe that Hartman, more than Erichson, is accountable for the delay of ATF's investigation. Hartman also failed to ensure that agents in Group III were consulting with the U.S. Attorney's Office about Ranferi Osorio and Morrison. We found that Hartman took no action to engage in or encourage discussions with prosecutors about Ranferi Osorio and Morrison, and that agents from Group III did not confer with the U.S. Attorney's Office until the death of Agent Zapata. Criminal Chief Maddox told the OIG that by the end of September or first part of October 2010 there was probable cause to believe that Ranferi Osorio and Morrison had committed crimes. He stated that an investigation of them should have been underway as of early October 2010 and should have been worked "hard and fast."

Maddox also stated, however, that it is not possible to determine in hindsight whether Ranferi Osorio and Morrison should have been arrested in September or October 2010. He said that it would have been necessary at that time for the agents to confer with prosecutors about the risks and rewards of taking or deferring action. Because those discussions did not occur, Maddox could not say what should have happened other than that an investigation should have been proceeding promptly. We agree that it is not now possible to identify what investigative steps should have been taken at the time, or when arrests should have occurred during that period. We believe, however, that it was Hartman's responsibility to ensure that agents in his group were conferring in a timely manner with prosecutors about Ranferi Osorio and Morrison, and that such efforts would have mitigated the communication problem that developed.

C. The Timeliness of ATF's Investigations and Arrests of the Osorio Brothers and Morrison

Our review determined that ATF did not effectively pursue investigative leads regarding the Osorio brothers and Morrison prior to November 2010, and delayed conducting follow-up investigation of these individuals after the November 9, 2010 firearms delivery beyond the time-frame reasonably required to ensure its actions did not compromise the DEA Laredo case and related national OCDETF investigations. We believe that the evidence was clearly sufficient to conclude that there was probable cause to arrest both Osorio brothers and Morrison no later than following the firearms transfer on November 9, 2010. While concerns regarding the potential impact on the Laredo [REDACTED] and the broader national OCDETF investigations – including witness safety issues – explained some of the delay in moving forward with proactive investigation and arrests, we found that ATF prolonged the delay longer than necessary. ATF's first contact with the Osorio brothers and Morrison did not occur until late February 2011, 5 months following Langward's warnings about Ranferi Osorio and Morrison and ATF's receipt of the La Pryor traces.

As we described above, ATF obtained a substantial amount of information by October 10, 2010, showing that Ranferi Osorio and Morrison could be committing firearms offenses, and that this information should have led to the opening of inquiries on Ranferi Osorio and Morrison. The evidence against the Osorio brothers increased significantly on November 9, 2010, when they both [REDACTED] delivering 40 firearms [REDACTED], 37 of which had obliterated serial numbers. Morrison was observed in a vehicle with the Osorio brothers later that day. The Osorio brothers' appearance with the firearms followed a series of communications [REDACTED] [REDACTED] which Campbell later described as supporting a finding of probable cause to support the warrants for the Osorio brothers' arrest and search of their home in February 2011. According to Criminal Chief Maddox, there was sufficient probable cause to arrest the Osorio brothers and Morrison on November 9, 2010.

Agents from ATF Dallas offered three explanations for the delays in investigating the Osorio brothers and Morrison: (1) they were waiting on instructions from DEA (including HIDTA) and ATF Laredo following the November 9, 2010 firearms transfer; (2) agents in Dallas were waiting on the traces from the November firearms transfer to arrive; and (3) it was too risky to proceed because there were too many unknowns about the relationship of the Osorio brothers and Morrison to other potential traffickers (*i.e.*, agents were still "connecting the dots"). We found each of these explanations unpersuasive, as detailed below. We also found that the delay in investigating Morrison following the November firearms transfer was much shorter than for the Osorio brothers (approximately 4 weeks versus 17 weeks), because Agent Dennison took the initiative to investigate Morrison.

1. Waiting on DEA

We found ATF's decision not to investigate the Osorio brothers in the weeks following the November 2010 firearms transfer resulted from a lack of communication with DEA, including HIDTA, and miscommunications between ATF's own agents. ATF deferred its investigation of the Osorio brothers while waiting on DEA to conclude its Mendoza investigation or to otherwise provide instructions that DEA never contemplated providing. Moreover, we found that prior to Agent Zapata's death, ATF agents in the Dallas Field Division never inquired with DEA about ATF investigating the Osorio brothers, and that the delays resulting from ATF's inaction were preventable.

We recognize that circumstances surrounding the firearms transfer counseled in favor of caution with regard to future contact with the Osorio brothers. One or more agents from Laredo had advised Campbell that the couriers who delivered the firearms [REDACTED] should not be arrested at the scene, and Miller recalled that he informed Campbell that the couriers would be indicted as a part of DEA's case in Laredo. Campbell also learned that DEA's case in Laredo [REDACTED]. SAC Champion recalled learning from one of his ASACs, most likely Andrews, that DEA had communicated through

ATF Laredo that it did not want ATF to take action against the Osorio brothers for fear of compromising a DEA investigation in Laredo. We believe these views were sincerely held by ATF agents in Dallas and, with one exception described immediately below, were reasonable in the immediate aftermath of the firearms transfer.

We found that Campbell misconstrued DEA's intentions and that his comments to his superiors about the firearms transfer influenced their approach towards the investigation of the Osorio brothers. According to Campbell, DEA's investment of resources in the firearms transfer; the discussions he had with Task Force Officer Caldwell about the Mendoza investigation; and the considerations cited above, such as the existence of [REDACTED] and the instructions to him not to arrest the Osorio brothers when they delivered firearms [REDACTED], warranted deference to DEA. However, Campbell told the OIG that his views about Group III refraining from investigating the Osorio brothers were based on assumptions about what DEA and ATF Laredo wanted and not direct requests to him to defer an investigation. We found that Campbell never discussed ATF's potential investigation of the Osorio brothers with anyone from DEA or ATF Laredo. Campbell stated that after the firearms transfer he had not heard anything from DEA and assumed that DEA did not want him to initiate contact with the Osorio brothers. According to Campbell, "[w]e were going to wait and move when they were ready for us to move."

We believe that Campbell extrapolated too much from the circumstances surrounding the firearms transfer and his discussions with Caldwell and Miller, and that he should have made direct inquiries about the future investigation of the Osorio brothers. According to the DEA agents with whom we spoke, DEA had no objection to ATF investigating the Osorio brothers after the firearms transfer. ATF Laredo agents Ramirez and Green both told the OIG that they were unaware of any requests by DEA to ATF to refrain from investigating the Osorio brothers. Ramirez also sent Campbell trace information within 8 days from the firearms transfer because he expected ATF Dallas to pursue an investigation in Dallas, and Green wrote to Campbell at the same time expressly encouraging him to open his own case. Therefore, we believe that Campbell's views that ATF Dallas should take no further steps until DEA provided additional guidance were misplaced. Unfortunately, Campbell shared these views with ATF managers who communicated them within ATF and in at least one circumstance, amplified them. Hartman told the OIG that ATF had been asked to "stand down" after the firearms transfer, which was not accurate and, according to Campbell, not something DEA told him. We further believe that Campbell's misplaced understanding could have been avoided had ATF agents expressly discussed with DEA whether ATF should investigate the Osorio brothers following the firearms transfer, and DEA made clear that it had no objection to ATF pursuing the Osorios.

Apart from Campbell's misunderstanding regarding DEA's intentions, two events should have changed ATF Dallas's "holding pattern" approach to the Osorio brothers following the firearms transfer. First, we believe that the

outcome of the operation itself should have resulted in Hartman's direct communication with DEA and ATF supervisors in Laredo about the Osorio brothers. We also believe that ATF Dallas' decision to wait on the conclusion of the Mendoza case or instructions from DEA without discussing the future investigation of the Osorio brothers with DEA was a mistake. As of November 9, 2010, it should have been apparent to Hartman that the Osorio brothers likely were collaborating in trafficking firearms to Mexico. A number of factors – the inter-agency nature of the firearms transfer, the participation of ATF offices in different ATF field divisions in the operation, the public safety considerations implicated from the number of firearms involved and their intended delivery to a dangerous drug cartel, the mission of Group III, the Osorio brothers' location in the Dallas area, and Campbell's notification on November 10, 2010 that their firearms shipment appeared to be linked to activities that were being investigated by numerous agents within the Dallas Field Division – should have led Hartman, as supervisor of ATF's firearms group in the Dallas Field Division, to either start an investigation of the Osorios or to obtain assurances from supervisors with DEA that DEA would investigate them promptly.

Instead, Hartman deferred to Campbell's mistaken impressions. Hartman told the OIG that in the aftermath of the November 2010 firearms transfer "[w]e will do what we need to if asked to do so." As with the leads he received about Ranferi Osorio and Morrison in September and October 2010, we believe that such a passive approach was inconsistent with the significant risk to public safety represented by the Osorios' gun trafficking activities, and that Hartman should have taken steps to ensure that they were investigated in a timely manner. Both SAC Champion and ASAC Andrews told the OIG that Hartman delegated too many responsibilities to his senior agents and at times was not sufficiently involved with the agents and cases under his supervision.⁷⁶ We believe that the lack of immediacy shown regarding the Osorios is an example of such behavior.

The second event that we believe should have altered ATF's passive approach was the e-mail Green sent to Campbell on November 17, 2010, in which he informed Campbell that "you are good to open a case" on the Dallas-based suspects from the firearms transfer because "we have violations on both ends [Dallas and Laredo]." However, we found no evidence that Campbell communicated this view to his supervisors or took action on it. Instead, Campbell told the OIG that he had concluded that HIDTA was pursuing suspects related to the firearms transfer, which, as we describe below, also proved problematic. After this November 17 e-mail, at the latest, any concern over disruption of cases in Laredo was not a basis to defer investigation of the Osorio brothers or their straw purchasers, including Morrison. We agree with the

⁷⁶ One agent told us that it was "unanimous among the agents that worked under him" that Hartman was not fully engaged at his job. Another agent told us that when he joined Group III, Hartman told him that he was "probably the most laid back supervisor he would ever have." The agent said that Hartman didn't ask a lot of questions about his investigations and, in comparison to other supervisors, Hartman was not as involved in the investigations.

assessment of ASAC Andrews, who told us that the responsibility to investigate the Osorio brothers was with Dallas ATF, certainly as of that point. According to ASAC Andrews, "this was in our backyard [T]hese guns came from our area. It's our case." SAC Champion also agreed that ATF Dallas could have proceeded with an investigation of the Osorio brothers after November 17, 2011. However, we found that SAC Champion was not informed about Green's November 17 communication with Campbell. Campbell told the OIG that he did not recall the exchange with Green, but apart from a misguided belief as to what the HIDTA might be doing, offered no explanation for why the investigation could not then have gone forward.

We also found that Group III had no basis in fact to defer its investigation owing to HIDTA's activities. Campbell's belief that agents from HIDTA would follow up with the Osorio brothers resulted from poor communication and inaccurate assumptions. Campbell told us that he recalled that DEA Task Force Officer Caldwell had told him that ATF agent Simmons would be working with Caldwell on DEA's case against the Eduardo Mendoza-Robles drug trafficking organization as it related to activities in Dallas, and that this statement led him to believe "somewhat" that DEA's HIDTA Group in Dallas was investigating the Osorio brothers. Campbell's view, however, was based on a misunderstanding of Simmons's work for HIDTA. Caldwell denied that DEA was investigating the Osorio brothers after the November 9, 2010 transfer, and Simmons denied that he ever received an assignment concerning the Osorio brothers prior to Operation Noble Hero. Simmons's supervisor Barnes stated that it was not HIDTA's mission to investigate firearms traffickers and that responsibility rested with Group III.

However, Simmons on two occasions received information that reflected Campbell's and Hartman's belief that he was working on matters related to the Osorio brothers, yet failed to advise Group III agents that he was not participating in an investigation of the Osorio brothers or their accomplices. Most significantly, Simmons was copied on an e-mail from Hartman to ASAC Andrews in December 2010 in which Hartman stated that Simmons should be assigned to investigate the Talamantes trace because Simmons was assisting with DEA's Mendoza investigation. Simmons told us that although he recognized that Hartman's e-mail was inaccurate and that he was not conducting the investigation that Hartman described, he did not inform Hartman or Campbell of this fact. We believe that Simmons should have made clear to Hartman and Campbell such significant misunderstandings of his work in the communications they sent him. We also found that neither Simmons, Campbell, nor Hartman consulted with Simmons's supervisor, Barnes, about whether Simmons was or should be investigating the Osorio brothers.

2. Waiting on Trace Information

We also found that agents' suggestions that Group III was waiting on trace information from the November 2010 firearms transfer to initiate their investigation of the Osorio brothers lacked merit. We agree that trace

information can be extremely valuable in identifying potential straw purchasers. However, Group III had a wide range of other investigative techniques and steps it could have used to collect evidence other than relying on information from the pending trace requests, including physical surveillance, electronic surveillance such as the placement of a tracker on one of Ranferi Osorio's vehicles, interviews, or even undercover investigation.

In lieu of waiting on trace information, we believe that ATF should have conferred with the U.S. Attorney's Office and either arrested the Osorio brothers or worked to develop any additional necessary investigative steps with respect to the Osorio brothers and Morrison.

3. "Connecting the Dots"

We were also told that agents delayed interviewing the Osorio brothers and Morrison for fear that contacting them potentially would interfere with on-going investigations or compromise identifying additional co-conspirators of the Osorio brothers. For example, when we asked Intelligence Chief Gibson why agents did not interview Morrison sooner, he said that there was a belief that Morrison was connected to other trafficking cases and coordination with other agents was necessary.

We found that SAC Champion was aware in September 2010 that ATF firearms trafficking investigations involving Erichson, Hardy, Campbell and other agents in the Dallas Field Division intersected with each other but it was unclear exactly how. According to Champion, "[w]e had bits and pieces . . . [and] we were trying to put these cases together. We weren't sure what we had." To address this problem, he directed Gibson on approximately September 20, 2010, to convene staff to meet to discuss their investigations. These efforts led to the assignment of an Intelligence Officer who began development of a chart in November 2010 that she described as an attempt to "connect the dots" between the investigations. We did not find evidence that these efforts expedited the investigation of the Osorio brothers or Morrison, however.

Instead, with respect to Morrison, we found that ATF's investigation of him originated from the initiative of agent Dennison. After Dennison received information on November 30, 2010 from Intelligence Analyst Langward about Morrison's multiple firearms purchases, he began to gather information about Morrison. Hartman instructed Dennison that before starting the investigation, he should confer with other agents in Group III to ensure that his work did not interfere with their investigations. Dennison told us that his impression after completing these consultations was that the other agents did not want to incur the risk of his investigation compromising other ATF cases. Moreover, Dennison stated that he received conflicting views on which agents were investigating Morrison. In fact, however, we found that no agent in Group III was investigating Morrison prior to Dennison's involvement. We believe that absent Dennison's intervention, Morrison, like the Osorio brothers, would not have been investigated by ATF Group III prior to Agent Zapata's death.

We recognize that the identification of the participants in and the workings of a firearms trafficking organization can be a difficult task. We believe, however, that agents refrained from contacting the Osorio brothers and Morrison for far too long as they contemplated linking information from their various investigations. As we described above, we agree with the assessment given to us by Criminal Chief Maddox that by late September 2010, ATF had sufficient facts to justify initiation of an investigation of Ranferi Osorio and Morrison and that it should have been worked "hard and fast." These efforts should have been proceeding prior to the November 2010 firearms transfer.⁷⁷ These were dangerous individuals involved in serious and significant ongoing criminal activities that represented a substantial risk to public safety in the United States and Mexico. Instead, we found that it was not until November 30, 2010 that an agent began looking at Morrison, and that Group III essentially ignored the Osorio brothers until after Agent Zapata's death in February 2011.

D. ATF Interactions with FFLs

Our investigation did not identify evidence that agents requested FFLs to make firearms sales to the Osorio brothers and Morrison. According to Campbell and Erichson, agents made no such requests.

We found that in the Reyes case, ATF agents conducted surveillance on two of Reyes' firearms purchases and that, at ATF's request, an FFL assisted ATF in setting up the sales. Agents later seized the firearms that the FFL sold. In the Gonzalez case, ATF agent Cole stated that he requested that an FFL notify him if the Gonzalez brothers passed their background checks. He said that he never instructed the FFL whether to make firearms sales to the Gonzalezes, and we found no evidence to the contrary.

⁷⁷ We found the members of the Osorio organization purchased 60 firearms from November 2010 through February 2011.

CHAPTER FOUR: BARBA AND RIENDFLIESH

In this Chapter we describe and analyze the information that was available to ATF, DEA, FBI, DOJ, and the U.S. Attorney's Offices for the Eastern and Southern Districts of Texas about the firearms trafficking activities of Manuel Gomez Barba and straw purchaser Robert Riendfliesh prior to Riendfliesh's purchase of one of the firearms that was used at the Zapata/Avila shooting scene (Riendfliesh Firearm). Barba led a group of firearms traffickers that ATF referred to as the "Baytown Crew." We describe the ATF investigations that preceded and eventually led to the Baytown Crew investigation, resulting in the arrests of Barba, Riendfliesh, and other members of the Baytown Crew, in the Southern District of Texas. We also describe the DEA investigation of Barba's narcotics activities in the Eastern District of Texas, which coincided with Barba's firearms trafficking, the significance of which became apparent in the aftermath of the Zapata/Avila shooting. Barba currently is completing a 9 year combined sentence on narcotics and firearms trafficking offenses. Other members of the Baytown Crew pled guilty to conspiracy and received probation.

I. Events Prior to the Purchase of the Riendfliesh Firearm

As we describe in more detail below, DEA first became aware of Barba at the end of April 2010, when a cooperating source identified him as a methamphetamine supplier in Beaumont, a city located in the Eastern District of Texas. On May 26, 2010, during a recorded DEA undercover operation, Barba told the source that he was involved in a firearms deal involving 20 AK-47s. Barba's statement was at least partially truthful; on that same day, straw purchaser Blandon Shaffer purchased 10 AK-47s from a Beaumont-based FFL and delivered them to Barba. DEA never shared Barba's statements with ATF or highlighted them for the U.S. Attorney's Office. ATF agents did not learn of Barba and Shaffer until August 2010 and in the meantime remained unaware of Barba's efforts to recruit other straw purchasers who lived in or around Baytown, Texas.

On June 17, 2010, DEA arrested Barba during a second undercover narcotics operation, and though he was initially detained and agreed to cooperate, DEA agents did not question him about the firearms deal he described in the recorded conversation with a DEA source on May 26. On July 26, 2010, the U.S. Attorney's Office, which was unaware of Barba's statements about firearms trafficking due to the DEA's failure to highlight them and an AUSA's overlooking an important DEA report documenting them, withdrew its motion for Barba's detention. The Court also was not aware of Barba's statements regarding his firearms trafficking before it agreed to release him from custody. Barba was released with the understanding that he would proffer at a later unspecified time and provide operational assistance under a future cooperation agreement with DEA. Barba did not proffer until February 7, 2011, however – more than 6 months following his release – and never finalized a cooperation agreement with DEA. Instead, Barba remained at liberty, during

which he funneled firearms to a major Mexican drug cartel, including the firearm purchased by Riendfliesh that was used in the deadly assault on agents Zapata and Avila.⁷⁸

During ATF investigations that began in June 2010, ATF identified three other straw purchasers – Jill Franklin, Sergio Escobedo, and Thomas Lawson – whom Barba and his associates had recruited.⁷⁹ ATF agents came to refer to this group of individuals as the Baytown Crew, a reference to the individuals' ties to Baytown, Texas. ATF's investigation ultimately revealed that these straw purchasers, as well as Shaffer and Riendfliesh, trafficked approximately 42 firearms over a 3-to-4 month period. Of the 42 firearms identified by ATF, Barba acquired 34 firearms prior to August 20, 2010, the day Riendfliesh purchased the weapon that would later be connected to the Zapata/Avila shooting scene in Mexico. ATF did not learn of Riendfliesh or his purchase until September 2010. The U.S. Attorney's Office for the Southern District of Texas prosecuted four of the five straw purchasers of the Baytown Crew.

Below we describe the investigation of Barba's narcotics activities by DEA's Beaumont Resident Office in May and June 2010, and his prosecution for conspiracy to possess with intent to distribute methamphetamine by the U.S. Attorney's Office for the Eastern District of Texas. We describe how DEA learned of and documented Barba's comments to the cooperating source about an arms deal involving 20 AK-47s, and what DEA did with that information. We also describe the firearms trafficking cases investigated by ATF's Houston Field Division later in 2010 that led to ATF's discovery of Riendfliesh and Barba. Specifically, we describe ATF's investigation of Federal Firearms Licensee (FFL) Katy Arms and its owner Lazaro Gil and how leads from that investigation helped guide the investigations of straw purchaser Jill Franklin and others associated with the Baytown Crew.

⁷⁸ In the criminal law context, a proffer agreement is "generally understood to be an agreement between a defendant and the government in a criminal case that sets forth the terms under which the defendant will provide information to the government during an interview, commonly referred to as a 'proffer session.' The proffer agreement defines the obligations of the parties and is intended to protect the defendant against the use of his or her statements, particularly in those situations in which the defendant has revealed incriminating information and the proffer session does not mature into a plea agreement or other form of cooperation agreement. *United States v. Lopez*, 219 F.3d 343, 345 fn.1 (4th Cir. 2000). A "proffer" refers to the substance of the information an individual provides to law enforcement as part of the proffer agreement.

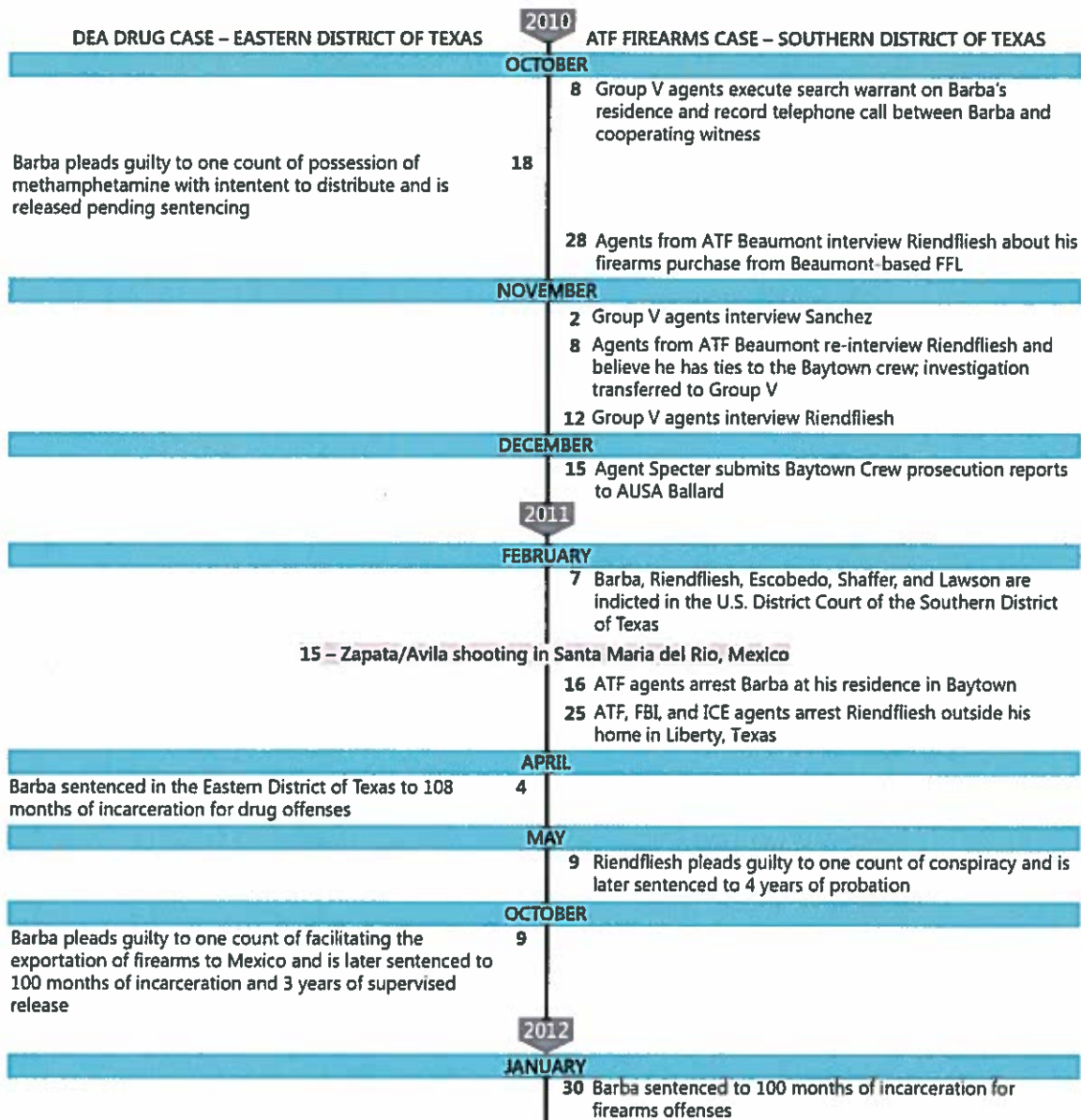
⁷⁹ Jill Franklin is a pseudonym.

Below is a timeline of events regarding Barba, Riendfliesh, and the trafficking of the Riendfliesh Firearm.

Timeline of Events in the Barba Narcotics and Firearms Investigations

2010		DEA DRUG CASE – EASTERN DISTRICT OF TEXAS	ATF FIREARMS CASE – SOUTHERN DISTRICT OF TEXAS
		APRIL	
	27	DEA agents debrief cooperating source who identifies Barba as drug trafficker	
		MAY	
	26	Barba informs cooperating source during a DEA recorded drug purchase that he is involved in a firearms deal of 20 AK-47s	
		JUNE	
			5 Sanchez purchases five rifles from Dallas-based FFL at Pasadena gun show
			6 Franklin purchases four pistols and one rifle from Dallas-based FFL at Pasadena gun show
			7 Dallas-based FFL contacts Agent Lions about Franklin's and Sanchez's firearms purchases; Lions opens investigations on Franklin and Sanchez
			16 Agent Lions speaks with an FFL employee about Sanchez's firearms purchases
	17	DEA and local law enforcement arrest Barba	
			18 Group V opens an investigation into FFL Katy Arms and its owner
	26	At Barba's initial appearance the U.S. Attorney's Office for the Eastern District of Texas requests that Barba be detained; Barba does not oppose the request and remains in custody	
		JULY	
	7	Barba is indicted in the Eastern District of Texas on drug charges	
	21	Barba is arraigned and the U.S. Attorney's Office for the Eastern District of Texas withdraws its motion for Barba's detention; Barba is freed on \$50,000 bond	
		AUGUST	
			3 ATF's Group V executes search warrants in Katy Arms/Gil investigation and seize records, including Firearms Transactions Records, and 1,566 firearms
			20 Riendfliesh purchases 10 AK-47 rifles, including the Riendfliesh Firearm, from an FFL in Beaumont, Texas, on behalf of Barba's firearms trafficking organization
			23 Agent Lions interviews Franklin about her firearms purchase from the Dallas-based FFL; Franklin says she purchased firearms for Barba
			25 While reviewing Firearms Transaction Records, Agent Smith discovers that Franklin purchased firearms from Katy Arms and alerts Agent Lions
			26 Agent Lions re-interviews Franklin; Franklin admits that she also purchased firearms from Katy Arms for Barba
			30 Group V agents start interviewing Barba's co-conspirators Anderson, Shaffer, Escobedo, and Lawson
		SEPTEMBER	
			1 Agent Lions learns about Barba's narcotics indictment in the Eastern District of Texas
			20 ATF agents discover that Riendfliesh purchased 10 AK-47 rifles on August 20, 2010, from Beaumont-based FFL; ATF Beaumont opens investigation

Timeline of Events in the Barba Narcotics and Firearms Investigations



A. DEA Narcotics Investigation of Barba in the Eastern District of Texas (May to July 2010)

1. Barba's Narcotics and Firearms Deals (early May 2010)

On April 27, 2010, agents from DEA's Beaumont Resident Office and deputies from a local sheriff's office debriefed an individual, who subsequently became a confidential source, about drug trafficking activities in the Eastern District of Texas. DEA Acting Resident Agent-in-Charge (RAC) of the Beaumont Resident Office, Michael Templeton, Special Agent Tony Flagge, and Task Force Agent (TFA) David Davenport attended the debriefing.⁸⁰ According to DEA records, the confidential source told law enforcement among other things that "Manny" – whom Flagge would later identify as Manuel Gomez Barba – sold methamphetamine in the Beaumont area. Flagge opened a DEA investigation of Barba on May 4 and was assisted on the case by Davenport. Two days later, Flagge e-mailed Assistant U.S. Attorney (AUSA) Jeff Wolfe of the U.S. Attorney's Office for the Eastern District of Texas with background information about Barba, and shortly after that conducted additional investigation.⁸¹

Flagge told us that the Barba investigation was a "straightforward operation." The strategy was to have the confidential source place "setup calls" to Barba that DEA would record. Agents would then exploit Barba's telephone numbers, arrange undercover narcotics buys between the source and Barba, and then convince Barba to cooperate with DEA to apprehend individuals higher in the narcotics supply chain. Flagge recalled that he spoke to Wolfe about whether the Eastern District of Texas had venue for a case against Barba, since the undercover operation that DEA wanted to conduct would take place in the Southern District of Texas.⁸²

Wolfe told us that other than addressing the venue issue posed by Flagge, he did not recall providing legal advice to DEA about the investigative strategy for the Barba case. Wolfe described the Barba investigation as a small, routine drug matter that was "reactive" in nature, meaning that the investigation was happening before the U.S. Attorney's Office got involved, although Wolfe vaguely recalled DEA telling him about plans for a "buy bust" at some point. Wolfe also told us that he was "swamped" with other work when he acquired the Barba case, including more complex and higher priority drug task force cases involving multiple defendants and wiretaps.

On May 20, 2010, at the direction of DEA, the confidential source called Barba to inquire about purchasing methamphetamine. Barba told the source

⁸⁰ Michael Templeton, Tony Flagge, and David Davenport are pseudonyms.

⁸¹ Jeff Wolfe is a pseudonym.

⁸² Baytown is in the Southern District of Texas. Flagge told us that he did not recall contacting anyone at the U.S. Attorney's Office for the Southern District of Texas about Barba's case.

that he could supply one or two ounces of the narcotic, but that he could not travel to Beaumont because he did not have a driver's license and instead wanted to meet in Baytown. As noted earlier, Baytown is located in the Southern District of Texas. DEA and local law enforcement arranged for the source to purchase methamphetamine from Barba in a store parking lot in Baytown on May 26. In advance of the exchange, Flagge fitted the source with an audio recording device. The operation also was recorded with video and DVD recording devices.

During the operation, the source purchased approximately 31 grams of methamphetamine from Barba for \$1,800 furnished by DEA. Flagge debriefed the source immediately following the undercover operation. Later that day he obtained the methamphetamine and entered it into evidence and drafted the DEA report of investigation, or "DEA-6," documenting the investigative activity. Paragraph 9 of the DEA-6 states the following:

BARBA exited the [source's] vehicle and while standing outside of the passenger's door, BARBA told the [source] that he was involved in an arms deal concerning approximately 20 AK 47's. BARBA stated that he had been trying to get in touch with his contact ([No Further Information]) but has not received a return call as of yet. BARBA stated that he had to be careful because he was on probation and that if he was arrested he would be facing 15 years in prison. BARBA entered his vehicle and departed the location at approximately 7:28pm.

Flagge told us that it is his practice to listen to the audio of an operation as it is taking place in order to protect the source and any government property that is being used. In this instance Flagge said he was probably listening in real time, but told us that he did not recall if he heard Barba's statements about the AK-47s as they were being made. Flagge said that he probably learned of the statements from debriefing the source immediately following the transaction and from reviewing the audio and video recording later. However, Flagge said he did not recall having a "direct conversation" with the source about Barba's purported deal for 20 AK-47s.⁸³

Flagge said he was not alarmed by Barba's statements about the firearms. He told us, "[A]s you become a more seasoned investigator, you learn that some of this information is credible, and some of it is not." According to Flagge, his assessment of Barba's credibility turned on corroboration. He told us that he ran Barba's name and telephone toll records through two DEA databases and did not identify any connection to other narcotics cases. However, Flagge told us he did not recall making an effort to contact ATF or the Baytown Police

⁸³ On June 16, 2010, the source provided a written statement at Flagge's direction about the events of May 26, but did not include anything about the 20 AK-47s. According to Flagge, the U.S. Attorney's Office at that time required statements from confidential sources relating to narcotics purchases in which the sources were parties to the transactions.

Department regarding Barba's claim about a deal for 20 AK-47s. Flagge also said he believed that Barba was trying to impress the source by talking about the deal. As he told us, "[y]ou have to understand that in this setting, with this confidential source, [REDACTED]

Flagge continued:

[T]here was no way that I could have verified this information unless I was able to sit down with [Barba] and interview him in a . . . post-interview or post-arrest setting. And I felt like that once we arrested this Barba, and we were able to, if we could get him to cooperate, or in that setting, then we could explore this information. But for me to say that that . . . information was credible at the time [of the undercover operation on May 26], I couldn't say that.

Asked whether the statement about the deal for 20 AK-47s described a felony, Flagge said that it did, but that it was not specific. He told us, "I would suggest to you that the reason I put the information about the AK-47s in the . . . buy report was the fact that . . . it led to possible criminal activity" and that he intended to use it at a later date after Barba was arrested.⁸⁴

Unfortunately, Barba had not fabricated the information about the AK-47s or that he was on probation. On the same day Barba made the statements to the DEA source about the firearms, straw purchaser Bandon Shaffer purchased 10 rifles from a Beaumont-based FFL and delivered them to Barba. ATF did not learn about Shaffer or his connection to Barba from DEA, and not until August 26, 2010, when ATF agents interviewed another Barba straw purchaser, Cara Franklin, as we describe later in this section. By that time, Riendfliesh had already purchased the Riendfliesh Firearm.

On June 2, 2010, Flagge submitted the DEA-6 on the May 26 drug buy to RAC Templeton, who approved it on June 9. Templeton told us that he first learned of Barba's statements about a deal for firearms when he reviewed the DEA-6. Templeton said the information concerned him and that after he approved the report he spoke to Flagge and Davenport and together they decided to contact the Baytown Police Department in order to arrange an operation to purchase additional methamphetamine from Barba and then arrest him – a buy-bust operation.

We asked Templeton whether he informed ATF, the Baytown Police Department, or the U.S. Attorney's Office about Barba's statements about firearms, or whether he instructed anyone else from DEA to do so. Templeton told us that "every time I get information about firearms, I contact . . . [ATF's] RAC in Beaumont" but that "we don't call ATF out every time a gun is

⁸⁴ As we describe below, after DEA agents arrested Barba they did not question him about firearms or investigate his statements to the cooperating source concerning the arms deal involving 20 AK-47s.

mentioned." Templeton could not recall his agents notifying ATF or doing so himself in response to Barba's statements and was unable to locate any documentation, such as a lead sheet or an e-mail, indicating that ATF had been contacted. Templeton said that he recalled that the Baytown Police Department already had some knowledge about Barba dealing firearms, and believed that either he, Flagge or another agent provided the Baytown Police Department or ATF the information about Barba's statements. He had no specific recollection of these events, however, or of providing instructions to his agents to contact ATF or the U.S. Attorney's Office about Barba's statements. Templeton also said that he would have expected the U.S. Attorney's Office to know about Barba's statements because AUSAs are given all of the DEA investigative reports for cases being prosecuted. Flagge told us that he believed he would have provided Wolfe with the DEA-6s prior to Wolfe's appearance before the grand jury; Barba was indicted by the grand jury on July 7, 2010.

As referenced above, Flagge told us that he did not contact anyone at ATF, local law enforcement, or the U.S. Attorney's Office about Barba's statements regarding a deal for 20 AK-47s. He also told us that he did not recall if Templeton talked to him about the statements, but said he would have passed the information to other offices if Templeton had instructed him to do so. According to Flagge, if he had provided another agency with the firearms information, he would have completed a lead sheet. He had no recollection of doing this in the Barba case, and we did not find any evidence of one being completed. Furthermore, at the time that Flagge was working on the investigation, he was not aware of any other law enforcement agency investigating Barba on firearms charges and, as we discuss below, we learned that ATF was not informed of the purchase of the AK-47s until August.

Flagge said he was not aware of any policy governing when DEA agents should contact ATF when gun-related information arose during the course of a narcotics investigation, though "I would pass [on information] if I knew that the information was credible. If, in fact, I could provide ATF with a . . . credible lead, I would do so." Asked about the circumstances under which DEA should pass a lead to ATF, Flagge responded, "I really don't have an understanding. I would just use my common sense that if I have credible information, then I'll pass that lead on." However, according to Flagge, DEA did not need to pass along the information about the 20 AK-47s to another agency because DEA planned to arrest Barba quickly and investigate his statements. More specifically, Flagge told us that his strategy for the investigation was to conduct another undercover narcotics buy and arrest Barba, and then "that information [about the firearms] would have been exploited during the setting of an interview, a post-arrest interview, a proffer agreement, or a setting like that." Flagge stated that he "purposely put that information [about the 20 AK-47s] in the report so I could go back in an interview setting with him and explore that information, or exploit that information." However, as discussed in detail below, neither Flagge nor anyone else at DEA ever investigated Barba's statements about the firearms. Flagge said his approach to notifying another agency would have been different if Barba had been trying to sell AK-47s to the source during

the undercover operation. Flagge told us, "if we were able to obtain some information about his involvement in weapons trafficking, I would have passed that information on to ATF, or the FBI, or whomever. I would have brought it to my supervisor's attention first, and then I would have reached out and made those contacts."

Templeton echoed Flagge's view that DEA took into account Barba's firearms statements in deciding how to investigate the case. He told us that DEA took Barba's possible firearms trafficking seriously and that it was the reason Barba was arrested less than a week after Templeton learned of Barba's statements. He also stated that suspects in undercover operations do not always speak the truth, and that they sometimes make statements about firearms in order to protect themselves when selling drugs. According to Templeton, DEA's concern was "getting [Barba] into custody as safe[ly] as possible for everybody involved."

As for Davenport, the task force officer from the Jefferson County Sheriff's Department who was working on the case with Flagge, he told us that he did not recall any conversations with Templeton or Flagge about Barba's statements regarding a deal for 20 AK-47s, and that he did not learn about the statements until after the February 2011 Zapata/Avila shooting, which was the first time he read the pertinent DEA-6. Davenport also told us that he believed Barba's comments were a credible lead and that the information should have been shared with another agency. According to Davenport, if he had known about Barba's statements regarding the 20 AK-47s on May 26, 2010, or shortly thereafter, he would have talked to Flagge, his supervisor, or both. As we discuss later in this Chapter, Davenport's perspective was shared by other witnesses with whom we talked who were not aware of Barba's statements about the 20 AK-47s until the time of their OIG interview, including the U.S. Attorney for the Eastern District of Texas.

Section 6612.42 of DEA's Agent Manual is entitled "Debriefing of Confidential Sources" and requires, among other things, that sources be questioned about their knowledge of "nondrug related criminal activities." According to this Section, if the nondrug information is "not specific, or of low significance, the First Line Supervisor will decide whether the report should be disseminated outside of the DEA. If the information concerns a serious criminal offense (e.g., a felony) or a crime which is planned to be committed, then action will be taken to coordinate with supervisory personnel of the responsible law enforcement agency, and/or with federal or state prosecutor." See Section 6612.42(B)(2). The Section also requires that this coordination be documented in a DEA-6 that is separate from any debriefing report.

We discussed with Flagge and Templeton the applicability of Section 6612.42(B)(2) to the information about Barba's firearms deal that Flagge told us he learned about during his debriefing of the DEA confidential source after his/her meeting with Barba on May 26, 2010, and from listening to the audio

tape of the meeting. Flagge told us that he did not believe the provision applied because:

a [confidential source] debriefing is when an agent sits down with . . . a confidential source, and receives information directly from them, from their knowledge, what they've seen, what they've heard, what they know about the organization that they're giving information on. This information that Barba made this statement about these . . . AK-47s was not [confidential source] information. It was a statement that [Barba] made to the [confidential source].

Flagge also told us that the confidential source debriefing is "completely different than the acquisition of evidence," which is what he was doing by including in the DEA-6 Barba's statements about the firearms deal. In addition, Flagge reiterated his position, as described above, that the information about the firearms was not specific or credible, that he performed his due diligence by checking DEA databases for connections to other drug cases, and that in any event, DEA intended to arrest Barba soon after the May 26 meeting.

Templeton told us that he was familiar with Section 6612.42(B)(2). He said that he did not know whether Flagge learned about Barba's statements contained in the DEA-6 from debriefing the source following the May 26 meeting with Barba or from listening to the audio recording of the meeting, and therefore could not say whether Section 6612.42 applied. However, Templeton agreed that if Flagge learned the information about Barba's firearms deal from the source, then the policy would apply and that information should have been reported to another law enforcement agency. On this point, and as described above, Templeton told us that he recalled that he and his agents separately talked to the Baytown Police Department about the situation with Barba, but he could not specifically recall whether the subject of firearms was discussed, though he believed it was.

2. Barba's Arrest and Detention (mid-June 2010)

On June 17, 2010, DEA agents, with support from the Jefferson County Sheriff's Office and Baytown Police Department, arranged for the confidential source to purchase more narcotics from Barba, again in a store parking lot in Baytown. During the operation, Barba delivered approximately 64 grams of methamphetamine to the source and was immediately arrested and detained; no firearms were recovered. Following his arrest, Barba agreed to cooperate with DEA and the Baytown Police Department to target his narcotics suppliers that night. Flagge told us that he did not conduct a full debriefing of Barba at that time and did not recall asking Barba about firearms. The DEA-6 that memorialized Barba's post-arrest interview does not include any reference to firearms.

With Barba's assistance, law enforcement conducted an undercover operation that evening that resulted in the recovery of 210 grams of

methamphetamine and the arrest of 3 individuals. After the operation, Barba was placed in the Jefferson County jail.

According to Flagge, his plan for the case after Barba's arrest was as follows:

[T]o explore [Barba's] cooperation as we demonstrated when we arrested him. Even after [DEA arrested him], I wanted to try to get [Barba] out of jail to see what he could do for us, because that's how we progress cases. You know, we have cooperating defendants. We have cooperating sources. And so, yes, I would have liked to have gotten him out of jail. But there [were] two things that hampered that. His attorney wouldn't let us talk to him, and then I was transferred to Baton Rouge, to my new post of duty.⁸⁵

On June 18, the day after Barba's arrest, Flagge drafted an affidavit detailing the Barba narcotics investigation and e-mailed it to AUSA Wolfe. Flagge's affidavit did not include Barba's recorded statements about the deal for 20 AK-47s that were documented in the DEA-6 from the May 26 drug buy. Flagge told us that in order to protect the integrity of the case, he only included enough information in the affidavit to establish probable cause relating to Barba's narcotics activities.

Wolfe told us that at the time he received the affidavit from Flagge, he is "quite sure" that he had not received any DEA reports in the case and therefore relied on Flagge for the accuracy of the facts in the affidavit. Wolfe said he would have expected Flagge to include in the affidavit Barba's statements about the 20 AK-47s "because that bears on whether there's going to be a detention hearing and whether [Barba] gets out." Wolfe also told us that if had he known about the firearms information, he would have instructed Flagge to add it to the affidavit.

Later that same day, Wolfe filed a criminal complaint against Barba in the U.S. District Court of the Eastern District of Texas. The complaint charged Barba with conspiracy to possess with intent to distribute methamphetamine. Wolfe also notified Court personnel by e-mail that day that the government would not be seeking Barba's detention. Wolfe forwarded this communication with the Court to Templeton and Flagge. According to Wolfe, the decision not to request detention "is contrary to what I normally do," and that "the only reason I would have done this is if [Agent Flagge] had told me he wants to work [Barba proactively]."⁸⁶ Flagge told us that he was confident he spoke to Wolfe about

⁸⁵ Flagge transferred to the DEA's Baton Rouge Resident Office on August 16, 2010. As described below, Barba was released from detention on July 26, 2010.

⁸⁶ Similarly, U.S. Attorney Bales told us that the U.S. Attorney's Office would not have withdrawn a motion for Barba's detention unless there had been a request to do so from law enforcement.

Barba's detention and that he told Wolfe he "would like to see [Barba] be able to get out and cooperate with us. That's what we do. That is how we operate." Wolfe told us he would not have agreed to Barba's release if he had known about Barba's statements concerning firearms.

On the morning of June 21, Wolfe e-mailed several colleagues asking for someone to cover Barba's initial appearance later that day because Wolfe would be out of town for work. Among other information, the e-mail informed his colleagues that the government was not going to request that Barba be detained. However, the attorney who ultimately covered the hearing was not among the recipients of Wolfe's e-mail and she asked that the Court detain Barba, a standard practice for the U.S. Attorney's Office in narcotics cases, according to Wolfe and others. Barba did not oppose the request.

On at least three occasions before and after Barba's initial appearance, Wolfe e-mailed Flagge to request DEA reports and other discoverable materials in the investigation. On June 19, Wolfe requested "all reports and discovery materials (including NCICs for the flip and the defendant) that you have as soon as you can[.] I need to draft the indictment in the near future and prepare the case for presentation/prosecution." On June 22 – the day after Barba's initial appearance – Wolfe requested "an NCIC, lab reports, police reports (on the [source's] arrest as well as the defendant's) and audio/video recordings as soon as you can get them to me. Certainly in advance of [the Grand Jury]." And on July 17, Wolfe requested "all relevant lab reports" and the arrest reports of DEA's confidential source and Barba's suppliers who were arrested on the same night as Barba.

We provided Wolfe with a copy of the DEA-6 from the May 26 drug buy. He told us that he had no recollection of previously reading the document or being made aware of Barba's statements about a deal for 20 AK-47s. He stated, "I don't recall any mention of guns being made. If it was in a report and I missed it, but I can't imagine that I would miss something like that. But that's, I'm a little shocked and surprised by this." Wolfe also did not recall when he received the audio and video recordings of the May 26 operation involving the DEA confidential source and Barba. Wolfe said that it is his practice to listen and view all recordings from investigations, but does not recall whether he followed this practice in the Barba case.

The OIG reviewed the official Barba case file maintained by the U.S. Attorney's Office, but did not find any DEA documents in it or copies of the audio and video recordings from the undercover operation. Although we did not identify any further requests from Wolfe for DEA reports after July 17, Wolfe told us that he did not believe that this meant he was in possession of all relevant reports by that time. Nevertheless, Wolfe told us that he did not doubt that DEA gave him the DEA-6 with Barba's statements about the deal for 20 AK-47s and that "obviously" he obtained it at some point. According to Flagge, he was certain that he had provided Wolfe with all the DEA documents in the Barba case, and that his practice is to provide the prosecutor with reports either before

or right after the case is presented to the Grand Jury. However, he could not recall when he did this in the Barba case and we did not find any documentation indicating when or whether the reports were provided to the U.S. Attorney's Office.

3. Barba's Indictment and Release from Detention (July 2010)

On July 7, 2010, Barba was indicted in the Eastern District of Texas on one count of conspiracy to distribute and possess with intent to distribute methamphetamine. On July 17, Wolfe e-mailed Flagge stating, "Barba has his arraignment this week. I will see if he still wants to work. If so we should complete a cooperation agreement and a proffer letter." Barba was arraigned on July 26, at which time the government withdrew its motion for detention and he was released on a \$50,000 bond. At the arraignment, Wolfe provided defense counsel with discovery, a proffer letter stating that Barba would not be prosecuted for any information he provided to law enforcement at his proffer (unless he made false statements), and a draft memorandum of agreement for Barba's cooperation.

According to Wolfe, the government withdrew its motion to detain Barba under the belief that he would proffer and then provide proactive assistance in DEA investigations of higher-level narcotics suppliers. Wolfe told us that he had "an independent recollection that [Flagge] told me that he wanted to work this guy [Barba]. That means to work him proactively." Wolfe said that he was responsible for arranging the proffer, and then DEA agents would arrange for Barba's operational assistance. Wolfe told us that at this time his "mindset" was to get Barba "on board towards a plea" because venue for the prosecution in the Eastern District of Texas was not strong.

We asked Wolfe why he did not insist on obtaining Barba's proffer before withdrawing the government's motion for detention. Wolfe acknowledged that it was "very common" to proceed in that way, and said that he did not know why it did not happen with Barba. Wolfe told us that if he had known about Barba's statements regarding the 20 AK-47s, he would not have agreed to Barba's release. However, Wolfe also said that judges in the Eastern District of Texas "believe strongly in the presumption of release," and that "the fact that an AUSA agreed to or disagreed to some person being released doesn't really have a material bearing many times on whether the person is actually released by a magistrate judge." But Wolfe added, "[t]o be fair, I think . . . if the judge was aware of actual gun dealing, then that probably would have cut against [Barba] being released."

RAC Templeton – Flagge's supervisor – downplayed the role DEA would have had in the government's decision to withdraw its motion for Barba's detention. Templeton told us that he would not have expected the U.S. Attorney's Office to consult DEA before deciding whether to seek Barba's release from detention and that DEA's "stance is [to] detain them all. We let somebody

else decide who's going to release the [defendants] Though [DEA] wants them detained." However, as we described earlier, Flagge told us that he wanted Barba released so that Barba could cooperate with DEA.

Barba did not proffer with DEA until February 7, 2011 – approximately 6 months after his release from custody – and never signed the draft cooperation agreement or provided any assistance to DEA.⁸⁷ On August 20, 2010 – 3 weeks after Barba was released from detention – Robert Riendfliesh, an individual then unknown to ATF, purchased 10 WASR-10 rifles from an FFL in Beaumont, Texas on behalf of Barba. One of these firearms would later be linked to the February 15, 2011 attack on Agents Zapata and Avila. As described in Part II of this chapter, ATF did not learn of Riendfliesh's firearms purchase until September 29, 2010.

B. ATF Firearms Trafficking Investigation of Barba in the Southern District of Texas (June to July 2010)

At the time DEA agents in Beaumont, Texas were accumulating evidence against Barba for drug trafficking and were aware of his statements about firearms purchases, ATF agents in Houston began to receive information about individuals who were straw purchasing firearms for a person they would later identify as Barba. On June 7, 2010, the owner or manager of an FFL based in Dallas, Texas, contacted ATF Special Agent Ronny Lions to report firearms purchases made the previous day by a woman named Jill Franklin at a gun show in Pasadena, Texas, southeast of Houston.⁸⁸ Lions at this time was assigned to Group V, a firearms trafficking group within ATF's Houston Field Division. According to the Form 4473 the caller faxed to Lions, Franklin had purchased four DRACO pistols and one WASR-10 rifle. Also on June 7, Lions received another call from the FFL about a purchase made by an individual named James Sanchez.⁸⁹ Sanchez had purchased five WASR-10 rifles from the FFL on June 5 at the same Pasadena gun show where Franklin had made her purchases.

In response to this information, Lions opened investigations of Franklin and Sanchez and began to gather basic information about them, such as the individuals' driver's licenses. Lions also had Franklin and Sanchez added to ATF's database of suspect persons and their purchases added to ATF's database of suspect firearms, and requested that an "intel workup" be done on both

⁸⁷ Wolfe contacted Barba's attorney on multiple occasions to arrange a proffer and to offer a plea agreement, and told us that the attorney failed to appear at three scheduled proffers. We did not interview Barba's attorney as part of this review.

⁸⁸ Ronny Lions is a pseudonym.

⁸⁹ James Sanchez is a pseudonym.

individuals that reflected any information available in ATF and public source databases. According to Lions, nothing notable was discovered.⁹⁰

On June 16, Lions spoke to an employee at the FFL about Sanchez's purchases and was told that Sanchez was quick to identify the firearms he wanted to purchase, and that he instructed, "I want all of those guns, every one of them." The employee also told Lions that Sanchez paid cash for the firearms. According to documents the OIG reviewed, on June 25, Lions informed the Group V Supervisor that he had conducted "a days [sic] surveillance on SANCHEZ'S purported residence[.]" However, Lions told us that he only vaguely recalled the Sanchez investigation and that he could not recall conducting any surveillance.⁹¹

Also on or about June 25, Lions spoke to the employee at the FFL who had sold the firearms to Franklin. Lions told us that he did not take notes of this conversation and could not recall what the employee told him other than stating that there was nothing unusual about Franklin's purchase. Lions also told us that he had conducted surveillance on Franklin's residence but was unable to locate her there. He told us that he did not document or recall how often he conducted surveillance of the residence, and that he did not attempt to conduct surveillance of Franklin elsewhere.

Lions's work on the Sanchez and Franklin investigations was effectively suspended at the end of June 2010 so that Lions could provide assistance to a recently opened firearms trafficking investigation of Katy Arms, an FFL based in Katy, Texas, and its owner Lazaro Gil (Katy Arms investigation).⁹² The case was opened by Group V and was predicated on the discovery that straw purchasers in other ATF investigations were acquiring multiple firearms from Katy Arms. Group V agents suspected that Gil knew the firearms transactions were illegal straw purchases. At his supervisor's direction, Lions shifted his attention from the Franklin and Sanchez investigations to the Katy Arms investigation, which became the focus of much of Group V's resources during the summer of 2010.

Within days of opening the Katy Arms investigation, ATF agents met with AUSA Kathleen Ballard from the U.S. Attorney's Office for the Southern District of Texas, and by the end of June had conducted surveillance on Katy Arms and Gil and obtained other records.⁹³ Lions told us that he supported the

⁹⁰ The Suspect Gun Database contains identifying information submitted to the National Tracing Center by ATF agents and investigators about firearms that are suspected of being illegally trafficked but have not been recovered.

⁹¹ We made numerous unsuccessful attempts to schedule an interview with the supervisor, who retired from ATF in September 2012. The OIG lacks testimonial subpoena authority over retired DOJ employees and therefore was unable to compel the supervisor's attendance at an interview.

⁹² Katy is located approximately 20 miles west of Houston.

⁹³ Kathleen Ballard is a pseudonym.

investigation by conducting surveillance, executing search warrants, and processing evidence. He did not return his attention to the Franklin and Sanchez investigations until late August 2010, by which time Riendfliesh had purchased the Riendfliesh firearm.⁹⁴

II. Events Following Purchase of the Riendfliesh Firearm

A. The Baytown Crew Investigation and Identification of Riendfliesh (August to October 2010)

After ATF's Group V executed the search warrants in the Katy Arms investigation in early August, Agent Lions refocused his attention on the Franklin case, as it was his only active investigation at the time.⁹⁵ As Lions told us, "this case had been open, and there hadn't been any activity on it . . . there needed to be some activity on it[,] [so I needed to] either go talk to her or close the case." On August 23, 2010, Lions and another Group V agent interviewed Franklin at her place of employment. According to Lions's written report of the interview, Franklin told the agents that a former high school classmate named "Barba" had asked her if she wanted to make some money. This was the first time Lions had heard of Barba. Franklin told the agents that she agreed to meet Barba at a gun show in Pasadena, Texas, and to purchase guns for him. She met Barba at the show on the morning of June 6, 2010; he then provided her with some money, walked her to a dealer's table, and identified the guns she should purchase. Franklin stated that after making the purchase, she left the show and provided the weapons to Barba, who placed them in the trunk of his car and then gave Franklin \$700 for her assistance. Franklin denied purchasing any other firearms for Barba.

At the time of the Franklin interview, Group V agents were still processing evidence seized in the Katy Arms investigation. Upon querying ATF's case management system with the names of the purchasers listed on the seized Form 4473s, agents identified "Franklin" as the purchaser of four WASR-10 rifles from Katy Arms at the Pasadena gun show on June 6. The queries also revealed that Franklin was the subject of an ATF investigation – the one Lions had opened in June based on Franklin's purchases from a different FFL, but at the same gun show.

⁹⁴ This report describes the Katy Arms investigation only as it relates to the Baytown Crew investigation. On October 7, 2013, Gil pleaded guilty to one count of selling a firearm to an underage individual and was later sentenced to 10 months of incarceration, followed by 3 years of supervised release.

⁹⁵ We did not find any evidence that Lions similarly re-engaged the Sanchez investigation, and it was closed on October 20, 2010. According to the Group V supervisor at the time, the case had "no potential." However, the supervisor was unaware when he closed the case that Sanchez was linked to Barba and his straw purchasers.

The Group V agents alerted Lions to Franklin's connection to the Katy Arms investigation on August 25; Lions and another agent re-interviewed Franklin the next day. According to Lions's written report of the interview, after agents confronted Franklin about the Katy Arms purchases, she admitted to lying to the agents during her previous interview and to purchasing additional firearms for Barba at the Pasadena Gun Show on June 6. Franklin told the agents that Barba had initially recruited her boyfriend, Sam Anderson, to make the purchases.⁹⁶ Anderson and Blandon Shaffer, another acquaintance of Barba, accompanied Franklin to the gun show and helped carry the firearms she purchased to Shaffer's truck. Franklin reiterated to the agents that Barba gave her the money for the purchases and told her which firearms to purchase and from which dealers. Franklin also identified the owner of Katy Arms in a photo spread as one of the dealers from whom she purchased firearms.

ATF agents reviewing the Form 4473s seized from Katy Arms identified additional individuals who had purchased multiple AK-47 rifles from the FFL, including Sergio Escobedo and Thomas Lawson. Between August 30 and September 14, 2010, ATF agents conducted interviews of Escobedo and Lawson, as well as Anderson and Shaffer. In those interviews, Lawson, Anderson, and Shaffer all identified Barba as the person who recruited them to purchase firearms at the gun show.⁹⁷ Escobedo identified Lawson as a person associated with the man who recruited Escobedo to purchase firearms. All four men told the agents that Barba or one of his associates supplied the cash to pay for the firearms, and that in exchange for making the purchases, Barba gave the straw purchasers cash or relieved them of a personal financial debt to him. In addition, Lawson identified Sanchez as an associate of Barba and stated that he carried the firearms he purchased for Barba to Sanchez's truck.

Several of the straw purchasers also told the ATF agents during these interviews that Barba was a narcotics trafficker; Shaffer said Barba was connected to a cartel in Mexico. The interviews also revealed that Barba told some of the straw purchasers that he wanted AK-47 or 7.62-caliber rifles, he needed at least 100 firearms, the firearms were going to Mexico, and the serial numbers on the firearms would be obliterated at Barba's parents' home in Baytown so that the firearms could not be traced back to the purchasers.

ATF's investigation revealed that Escobedo purchased six firearms, Shaffer purchased five firearms, and Lawson purchased six firearms from Katy Arms at the Pasadena Gun Show on Barba's behalf. Escobedo told ATF that he had attempted to purchase more firearms at the Pasadena Gun Show, but that another dealer refused to sell him the firearms and told him that the purchase seemed suspicious.

⁹⁶ Sam Anderson is a pseudonym.

⁹⁷ Anderson told ATF agents that he asked Franklin to make the purchases because he lacked a driver's license and was thus ineligible to buy guns.

Shaffer also told ATF agents that on May 26, 2010 – the same day that Barba described to the DEA source that he was involved in a firearms deal involving 20 AK-47s – he had purchased 10 AK-47s from a Beaumont-based FFL for Barba. None of the straw purchasers interviewed in the Baytown Crew investigation identified Riendfliesh to ATF agents, but the information provided by Shaffer eventually led to ATF agents discovering Riendfliesh, but only after he had given the Riendfliesh Firearm to Barba, as described below.

Two of the straw purchasers said Barba warned them of ATF's interest in their firearms purchases. Shaffer told ATF agents that Barba contacted him at the end of August 2010 – just weeks after Barba had been released from detention on the DEA charges – to tell him that the police were asking questions about the firearms but that the firearms were gone and that the police had no evidence against them. Similarly, Lawson told ATF agents that on September 10, 2010, Barba had told him that ATF would be questioning Lawson about his firearms purchase, and that Lawson should lie to authorities about the firearms.

The results of these interviews caused ATF to focus on Barba and the straw purchasers whom he recruited. The Franklin investigation was renamed the Baytown Crew investigation, reflecting the subjects' ties to Baytown, Texas, and beginning about September 23, 2010, Group V agents conducted surveillance of Barba's residence in Baytown and his girlfriend's residence in Houston. Agents never spotted Barba, but they were able to identify vehicles associated with him. At the end of the month, ATF Special Agent Gary Specter, the case agent for the Baytown Crew investigation, drafted a search warrant for Barba's residence in Baytown, Texas, and sent a copy to AUSA Ballard for her approval.⁹⁸ On October 4, 2010, a federal magistrate judge signed the search warrant, which ATF Houston's Group V executed on October 8. ATF recovered one pistol, various types of ammunition, and other items. Also on October 8, agents arranged for a cooperating witness to call Barba to discuss the firearms that Barba had accumulated from straw purchasers; ATF recorded this conversation. During this recorded call, Barba confirmed that the serial numbers had been removed from the firearms he had acquired and that the firearms were already out of the country when agents searched his residence.

Specter said that shortly after the recorded telephone call, he spoke to AUSA Ballard about what Barba had said during the recorded call and whether there was sufficient probable cause to arrest Barba through a criminal complaint for his firearms trafficking activities. According to Specter, Ballard did not believe there was enough evidence yet to take this step. Ballard told us that she believed this was her position as well, though she could not recall what specific additional investigative steps she believed were needed. She said she

⁹⁸ Gary Specter is a pseudonym.

In early September 2010, Lions transferred from Group V to another firearms trafficking group in ATF's Houston Field Division and had no further involvement with the Baytown Crew investigation.

wanted the agents to follow-up on some information and to pull all of the evidence together for her to review. As described below, ATF submitted a prosecution report to the U.S. Attorney's Office on or about December 15, 2010, recommending that Barba be indicted. We asked Specter whether there was any concern that Barba might continue to traffic guns as ATF gathered additional evidence for the prosecutor. Specter said this was not a concern because he believed Barba's firearms trafficking ceased when the agents began interviewing the straw purchasers about their activities.⁹⁹

As agents were investigating Barba's activities in Baytown, 2 Group V agents from Houston traveled to Beaumont, Texas to interview the owner and 2 employees of the FFL where Shaffer purchased the 10 AK-47 rifles on May 26, 2010. Resident Agent-in-Charge (RAC) Colin Patrick from ATF's Beaumont Field Office assisted with the interviews.¹⁰⁰ The FFL employees told the agents about the circumstances of Shaffer's purchase, which were consistent with what Shaffer previously told the agents at his interview. During this visit, the owner and employees also told the agents about another customer, Robert Riendfliesh, who had purchased 10 AK-47 rifles on August 20, 2010; these rifles were of the same make and model as those purchased by Shaffer. Neither the Group V agents nor Patrick had ever heard of Riendfliesh.

Following the interviews at the FFL, ATF's Beaumont Field Office opened a case on Riendfliesh. Patrick told us that because at that time there did not appear to be a link between Shaffer and Riendfliesh, the Beaumont office took the lead on investigating Riendfliesh. After gathering some background information about Riendfliesh from the local police, Special Agent Robert Lancaster and another agent interviewed Riendfliesh on October 28.¹⁰¹ During that interview Riendfliesh stated that he had purchased the firearms in August for an unknown man whom he had met at a gas station. However, a few days after this interview, Riendfliesh contacted Lancaster and said that he had omitted some information about his firearms purchase when he spoke with the agents.

During a second interview, conducted on November 8, Riendfliesh told the agents that he had been untruthful in the first interview because he feared for his family's safety. He said that he had purchased the firearms for "Manuel or Manny," an individual who had supplied Riendfliesh with marijuana

⁹⁹ Prior to submitting the prosecution report, Specter and other agents conducted some additional interviews of potential straw purchasers and attempted to locate Barba. Specter told us that Barba made statements during the October 8 recorded telephone call indicating he was aware of ATF's investigation and had taken steps to hide from law enforcement. According to Specter, ATF did not locate Barba until 1 week after his February 8, 2011 indictment. While we believe there likely was probable cause to arrest Barba following the execution of the search warrant and the recorded telephone call, we did not find under the circumstances that the delay in indicting and arresting Barba was unreasonable or improperly motivated.

¹⁰⁰ Colin Patrick is a pseudonym.

¹⁰¹ Robert Lancaster is a pseudonym.

"periodically." According to Riendfliesh, he told Manuel that he was having money issues and Manuel told him that he could make "some extra cash" by purchasing firearms. Manuel gave Riendfliesh instructions on how to purchase 10 AK-47 rifles and deliver them to his associates. Manuel provided him with money to pay for the rifles, and Riendfliesh received \$650 for completing the purchases. Riendfliesh told the agents that he had tried to call Manuel a few days later in search of marijuana, but that Manuel's telephone number was "off." Riendfliesh said he had not had any other contact with Manuel. Lancaster told us that after this second interview, RAC Patrick realized that Riendfliesh may be connected to the Baytown Crew investigation and therefore transferred the investigation to Group V in Houston.

B. Contact between U.S. Attorney's Offices in the Eastern and Southern Districts of Texas Regarding Barba Investigations (October to December 2010)

In early to mid-October 2010, after Lions learned about the DEA case on Barba and his indictment in the Eastern District of Texas for conspiracy to distribute methamphetamine, staff from the Eastern and Southern Districts of Texas – including AUSA Wolfe and AUSA Ballard – corresponded by e-mail about their respective Barba cases.¹⁰² This correspondence followed contact that Ballard and Agent Lions made with Wolfe in early September to alert him to the ATF firearms trafficking case in the Southern District of Texas. Wolfe told the OIG that he could not recall the details about these early contacts, but said that if he had known about Barba's statements regarding the 20 AK-47s at that time, he would have told Lions and Ballard "that there was some gun angle on my side of the case." However, he also told us that Ballard did not ask him to take any action regarding Barba, and that he did not himself reconsider Barba's release conditions after he learned about the firearms trafficking investigation in the Southern District.

The October correspondence between the offices primarily concerned updates on the status of each case. For example, in an e-mail from October 8, Wolfe informed Ballard that Barba had signed a plea agreement in the narcotics case and that the government had scheduled a proffer session with Barba for October 21. Wolfe also e-mailed Ballard a copy of the Factual Basis and Stipulation for Barba's narcotics case, which Ballard told us was the only document she received containing facts about Barba's narcotics case until Wolfe provided her with Barba's presentence report later. Ballard in turn forwarded Wolfe's e-mail to Agent Specter and inquired if ATF was ready to proffer Barba on the firearms case. Specter told us that he was not willing to proffer Barba at this point because Barba was ATF's main target and he did not want to give Barba "credit for anything." Specter also said he would have made the same decision even if he had known about Barba's statements regarding the deal for

¹⁰² Lions told us that he may have learned about Barba's narcotics case from officers with the Baytown Police Department, but he could not specifically recall.

20 AK-47s. Based upon Specter's input, Ballard sent an e-mail to Wolfe and Davenport on October 15 that described what ATF had seized during the execution of the search warrant on Barba's residence, and that advised them that ATF wanted to review all of the evidence in the firearms case before joining any debriefing of Barba in the narcotics case.

On October 18, Barba pleaded guilty in the Eastern District of Texas to one count of possession of methamphetamine with intent to distribute, and remained on release pending his sentencing. A few days later, Specter contacted April Wyshak, a DEA agent who assisted on Barba's narcotics case after Flagge transferred, to discuss the status of the DEA case.¹⁰³ Wyshak provided Specter with the names of narcotics suppliers whom Barba had "flipped on" the night of his arrest on June 17. Specter told us that ATF was unable to find a connection between Barba's narcotics suppliers and his firearms trafficking activities.

Following the plea agreement, throughout November and December 2010, Wolfe attempted without success to schedule Barba's proffer in the narcotics case. On November 16, Wolfe e-mailed Ballard that Barba's proffer had been rescheduled to November 19, and inquired about the status of her case and whether she needed any assistance. After discussing with Agent Specter and TFA Davenport, Ballard responded, "[a]s [David Davenport] and I discussed on the phone, if Barba talks about guns, let him talk, but [do] not ask pointed questions about the guns. If [Barba] comes on board, ATF would like to talk to him at a different time about the guns. DEA, if this happens, you are more than welcome to attend the debriefing."

Wolfe replied to Ballard that Barba's proffer had not been confirmed through defense counsel, but that "[w]e will steer clear of your turf if the proffer happens." Ballard responded, "we are probably a couple of months away from indictment, since they are still working up the chain on the firearms side. I will let you know once he is indicted over here."

On December 13, Wolfe e-mailed Ballard, copying Davenport and Wyshak, to again check in on Barba's firearms case. Ballard responded that the case was developing, that she was preparing for a mortgage fraud trial starting in January 2011, and that the Barba case would not be presented to the grand jury until February. Two days later, Wolfe e-mailed Ballard a copy of Barba's presentence report for his sentencing in the Eastern District of Texas.

¹⁰³ April Wyshak is a pseudonym. Wyshak is retired from DEA. We asked Wyshak if she would agree to be interviewed and she declined. The OIG lacks testimonial subpoena authority over retired DOJ employees and therefore was unable to compel Wyshak's attendance at an interview.

C. Indictment of Baytown Crew Members and Arrest of Barba on Firearms Charges (December 2010 to February 2011)

At the time the Riendfliesh investigation was transferred to Group V in ATF's Houston Field Office in early November, Agent Specter was continuing to collect evidence in the Baytown Crew case and meeting with AUSA Ballard to discuss how the case was progressing. On November 12, 2010, Specter and another Group V agent interviewed Riendfliesh. Riendfliesh provided these agents with a statement that was consistent with his second interview with the ATF agents in Beaumont on November 8. Riendfliesh identified Barba in a photo spread as "Manuel," and told the agents that he was not aware of any other individuals who had purchased firearms for Barba.

Specter submitted his prosecution report to Ballard on December 15. The report recommended that Barba, Riendfliesh, Franklin, Anderson, Escobedo, Shaffer, and Lawson be prosecuted.¹⁰⁴ Ballard told us that she was in a complex, month-long trial at that time, and was unable to focus on ATF's referral until January 2011.

On February 7, 2011, Barba finally provided a factual proffer to DEA agents about his narcotics activities. Barba did not voluntarily provide any details about firearms trafficking and, consistent with Ballard's earlier request, the DEA agents did not question him about the subject. On February 8, Wolfe advised Ballard in an e-mail of the substance of Barba's proffer. Davenport told us that he would have "thought different[ly]" about how to conduct Barba's proffer if he had known about Barba's earlier statements to the cooperating source concerning the deal for 20 AK-47s. He also told us that ATF should have played a role in the proffer in light of that information.

Also on February 8, Barba, Riendfliesh, Escobedo, Shaffer, and Lawson were indicted in the U.S. District Court for the Southern District of Texas. Ballard advised Wolfe of the indictments in an e-mail on the same day. Barba was indicted on charges of conspiracy, making false statements to an FFL, and receiving firearms while under indictment on the Eastern District of Texas drug case. Riendfliesh and the remaining co-defendants were each indicted on one charge of conspiracy and one charge of making a false statement to an FFL. A federal judge signed arrest warrants for all the defendants the same day.

One week later, on February 15, 2011, ICE Agents Avila and Zapata were shot by assailants near Santa Maria del Rio, Mexico. Agent Zapata died from his injuries; Agent Avila was seriously wounded but survived. One of the weapons used at the shooting scene was later traced to Riendfliesh and Barba. It took the agents some time to locate Barba after his indictment and, the day after the shooting, ATF agents arrested him at his residence in Baytown; it was not until

¹⁰⁴ ATF's prosecution report to the U.S. Attorney's Office did not reference Sanchez. Specter told the OIG that ATF recommended that Sanchez be prosecuted, but the U.S. Attorney's Office for the Southern District of Texas declined to do so.

February 25 that agents learned that the Riendfliesh Firearm had been used at the scene of the shooting in Mexico. After waiving his rights, Barba told the agents that a man he later identified as Gil, whom he had met at a gun show in mid-April 2010, had recruited him to purchase firearms that would be shipped to Mexico.¹⁰⁵ Barba stated that he informed Gil that he was prohibited from purchasing firearms, and Gil told Barba to recruit others to make the purchases. According to Barba, Gil told him that he only wanted 7.62-caliber firearms, such as Century Arms, WASR-10s, and semi-automatic rifles, and that he provided Barba with the money to cover the cost of the firearms plus \$175 per firearm. Barba stated that Gil then instructed him to remove the serial numbers from each firearm and that no one should buy more than eight firearms at a time. According to Barba, the firearms were taken to his parents' home in Baytown, Texas, immediately after they were purchased, at which time the serial numbers were ground off. Barba told the agents that within 2 hours of reaching his parents' home, the firearms would be picked up by someone at Gil's direction.

Barba also told the agents that he recruited people who were in difficult financial situations, including Franklin, Sanchez, Escobedo, Shaffer, and Lawson. Barba stated that the people he recruited bought approximately 70 firearms, half of which came from Katy Arms and Gil. Barba did not identify Riendfliesh as a straw purchaser.

On February 17, Ballard e-mailed Wolfe, Davenport, and Wyshak about Barba's arrest and advised that the statements he provided helped corroborate the firearms case and that agents would "most likely be able to go up the chain to the next guy." Barba was detained following his arrest, and subsequently waived a detention hearing on February 22, and was remanded into custody pending trial.

III. Events Following ATF Trace of the Riendfliesh Firearm

A. Arrest of Riendfliesh

On February 25, 2011, ATF's Attaché in Mexico City informed Agent Specter that one of the firearms used at the Zapata/Avila shooting scene had been traced to a purchase made by Riendfliesh at a Beaumont-based FFL. ATF, FBI, and ICE agents arrested Riendfliesh without incident on that same day, outside of his home in Liberty, Texas¹⁰⁶

¹⁰⁵ In contrast to this statement, in a proffer with the government on January 27, 2012, Barba stated that a member of the Los Zetas cartel directed him to recruit straw purchasers. At that proffer, Barba also identified this individual as his narcotics supplier. This individual was later arrested and convicted in a separate investigation.

¹⁰⁶ ATF also arrested the remaining Baytown Crew members: ATF arrested Lawson on February 17, 2011, Escobedo on February 28, 2011, and Shaffer on March 10, 2011. In post-arrest interviews and government proffers, Escobedo and Lawson identified Manuel Barba, his
(Cont'd.)

AUSA Wolfe, his supervisor Patrick Davis, and the DEA agents in Beaumont learned on March 1, 2011 of the link between Barba and the Riendfliesh Firearm from a DEA agent in Houston who was working on the Zapata/Avila shooting investigation.¹⁰⁷ U.S. Attorney Bales was not informed of the connection at this time.

On April 5, 2011, Riendfliesh told ATF agents and AUSA Ballard that his previous statements to ATF were untruthful. Riendfliesh stated that Shaffer, not Barba, asked him to purchase firearms on behalf of a friend, whom he later learned was Manuel Barba, and because of his strained financial situation, he agreed. Riendfliesh told ATF that he had never met Barba. He said that shortly after he purchased the firearms, Shaffer told him that ATF would be coming to speak to him but that ATF was only interested in Barba. Riendfliesh said Shaffer instructed him to tell ATF that Barba had asked him to purchase the firearms. Riendfliesh also stated that after he purchased the firearms, but before ATF had contacted him, he went to Shaffer's home to purchase marijuana, and he saw Shaffer and Anderson obliterating serial numbers from firearms. Riendfliesh learned that Daniel and Manuel Barba organized the purchase of firearms to be trafficked to Mexico.

Riendfliesh pleaded guilty to one count of conspiracy on May 9, 2011 and was sentenced to 4 years of probation on January 30, 2012.

B. Resolution of Barba Narcotics and Firearms Cases (April 2011 – January 2012)

On April 4, 2011, Barba was sentenced in the Eastern District of Texas to 108 months of incarceration, followed by 4 years of supervised release, for conspiracy to possess with intent to distribute methamphetamine in the Eastern District of Texas. Several weeks later, on May 18, 2011, prosecutors in the Southern District of Texas filed a superseding indictment against Barba that added an additional charge for facilitating the exportation of firearms to Mexico. On October 31, 2011, Barba pleaded guilty to one count of unlawfully exporting firearms, and on January 30, 2012 was sentenced to 100 months of incarceration followed by 3 years of supervised release. The remaining Baytown Crew co-defendants each pleaded guilty to one count of conspiracy and were sentenced to 5 years of probation.

C. Press Inquiries about Barba's Connection to the Zapata/Avila Shooting (February 2012)

On February 9, 2012, a reporter from *The Brownsville Herald* contacted the Public Information Officer (PIO) at the U.S. Attorney's Office for the Eastern

brother Daniel Barba, and Sanchez as orchestrators of the firearms trafficking scheme. Shaffer identified only Manuel Barba and Daniel Barba.

¹⁰⁷ Patrick Davis is a pseudonym.

District of Texas to inquire about Barba's connection to one of the firearms used at the Zapata/Avila shooting, and whether the firearm was connected to ATF's Operation Fast and Furious.¹⁰⁸ Specifically, the reporter asked if the firearm was a "controlled purchase while Mr. Gomez Barba, who was released on bond without objection from the U.S. Attorney's Office, was cooperating with the DEA, and as the record reflects became an informant." The PIO immediately forwarded this press inquiry to U.S. Attorney Bales, then-Deputy Criminal Chief Patrick Davis, AUSA Wolfe, and other supervisors in the office.

Bales told the OIG that the first time he became aware of Barba was when he received the e-mail from the PIO about the inquiry from *The Brownsville Herald*. Bales told us, "I certainly didn't know that one of the weapons that Barba was responsible for the straw purchase of had showed up at the murder scene in Mexico." He also stated, "I was flabbergasted that I had not been told. . . . I was obviously dismayed that . . . Barba had done this while out [of custody] and supposedly trying to cooperate with the DEA."

Wolfe responded to the PIO and the others, stating that he had spoken to his supervisor, Davis, but that "[t]he correct response to these queries is way above my pay grade," and that in any event, AUSA Ballard out of the Southern District of Texas had handled Barba's firearms case. The PIO then circulated by e-mail some proposed answers to the reporter's inquiries, including that Barba's case in the Eastern District of Texas "did not involve firearms and we do not have any information on any of the weapons referenced in your email." Bales replied, "Do we know if Barba was ever a DEA informant? Or did he just cooperate for some amount of time after his arrest? Do we have any guns in [Wolfe's] case? Was Barba in the chain of ownership for any of the Jaime Zapata murder weapons? Of course, let [Ballard] know about this reporter's efforts." Bales told us that his question about firearms was meant to elicit whether his office knew "anything about [Barba] touching guns," and not whether Barba had been charged with a gun offense, which Bales already knew was not the case. Bales said that he would have expected Davis and Wolfe to alert him to the information about Barba's deal involving 20 AK-47s described in the DEA-6 at the time of this e-mail exchange, if they were aware of the information. Both Davis and Wolfe told us that they were unaware and, therefore, had not notified Bales of this.

¹⁰⁸ Operation Fast and Furious was a flawed ATF firearms trafficking investigation conducted from approximately October 2009 to August 2010 by ATF's Phoenix Field Division and the U.S. Attorney's Office for the District of Arizona. The operation gained national attention after ATF whistleblowers came forward to publicly criticize the conduct of the operation following the shooting death of U.S. Customs and Border Protection Agent Brian Terry on December 14, 2010. Two rifles recovered at the shooting scene were purchased by an individual who was a subject in the Fast and Furious investigation. At the request of the Attorney General, the OIG conducted a review of the operation. Our report, *A Review of ATF's Operation Fast and Furious and Related Matters*, can be found at <https://oig.justice.gov/reports/2012/s1209.pdf> (accessed February 27, 2017).

Davis responded to the U.S. Attorney's questions, but instructed Wolfe to "please correct me if I get any of this wrong." Davis wrote that Barba wanted to cooperate and eventually proffered with DEA about Houston area drug traffickers, but that "[u]ltimately, there was no meaningful cooperation." He also described how the U.S. Attorney's Office for the Eastern District of Texas learned of Barba's firearms case in the Southern District of Texas and that AUSA Ballard asked Wolfe to avoid asking Barba about any of his activities involving firearms. Finally, Davis asserted, "There were no weapons in our case." After reviewing Davis's e-mail response, Wolfe replied that the information was accurate.

On the afternoon of February 9, 2012, the PIO e-mailed the following response to *The Brownsville Herald* reporter, which Bales approved:

Barba was prosecuted in the Eastern District of Texas on a drug trafficking charge (methamphetamine) and sentenced to 108 months in federal prison on Apr[il] 4, 2011. Barba was the only defendant in this case, he did not have any co-defendants. There were no firearms involved in this case and we do not have any information regarding the firearms referenced in your email. I understand Barba may also have been prosecuted in the Southern District of Texas and/or Harris County, but this would not have been linked to our drug prosecution. The [Eastern District of Texas (EDTX)] did not participate in the 'Fast and Furious' operation at any time. All plea agreements are sealed in the EDTX by order of the court.

Bales told us that when he gave the PIO permission to state there were no firearms in the Barba case, he relied on the information conveyed to him by Davis. Bales said that if he had learned of Barba's statements regarding the deal for 20 AK-47s on the day of the press inquiry, his office's response may have been different and "there would have been an internal situation that I would have started a whole other inquiry about."¹⁰⁹

The reporter for *The Brownsville Herald* e-mailed several follow-up questions to the PIO later in the day on February 9, including, "[C]an you say why the U.S. Attorney's Office didn't object when Gomez Barba was released from custody pending trial? Can you say why the government withdrew its motion for detention? Can you say how long [Barba] was an informant for the DEA? Did ATF ever advise the Eastern District that Gomez Barba was trafficking

¹⁰⁹ We asked Bales whether in light of the information about the 20 AK-47s the statement that "there were no firearms involved" in the narcotics case was accurate. Bales told us that he believed it was accurate because the Eastern District of Texas did not investigate or prosecute Barba for firearms. Bales said, "[I]t is unfair to say that our case was a firearms case. It probably should [have] become a firearms case. But it never really was a firearms case. It was never charged that way." He also added that his office did not want to comment on the Southern District of Texas's firearms case against Barba.

weapons?" The PIO forwarded these follow-up questions to Bales, Davis, Wolfe, and one other supervisor at the U.S. Attorney's Office. Bales responded to the PIO and the others on the e-mail that the office had no comment on the follow-up questions, which the PIO communicated back to the reporter. Wolfe replied to the PIO's e-mail, stating, "I don't really recall why I withdrew my motion right now. Let me think on that. . . . I don't recall why I let him out . . . o[r] if I actually did." Wolfe also wrote that Barba was never an informant, but did "'flip' on the night of his buy-bust arrest and order up from his Source of Supply (which resulted in the arrest of two Hispanic males in the [Southern District of Texas])." Wolfe also stated in his reply that Barba eventually proffered but did not provide helpful information.

On February 10, 2012, Wolfe e-mailed the initial inquiry from *The Brownsville Herald* to DEA RAC Templeton, writing simply, "FYI[.]" Templeton told the OIG that after he received this e-mail, he discussed the matter with TFA Davenport, Wolfe, and Agent Flagge, who by this time had transferred to ATF's Baton Rouge Resident Agency. As Templeton recalled to the OIG, Flagge told him that Barba was used for an undercover operation on the night of his arrest, but that DEA did not request to use Barba again. Templeton told us that even after looking into the issue of Barba's release from custody, he still does not know why Barba was released. As described earlier, however, Flagge told the OIG that he was sure he had conversations with Wolfe about Barba's detention and that he would have liked to have Barba released so that he could cooperate with DEA. Wolfe also told us that he believed that Flagge wanted Barba released so that he could work as a cooperator.

In the late morning of February 13, 2012, Bales sent an e-mail to Davis, Wolfe, and other supervisors in the U.S. Attorney's Office, together with a copy of an article from *The Brownsville Herald* titled, "Court records follow trail of guns used in attacks on ICE agents."¹¹⁰ Bales wrote to his staff:

I just read the article and I want to be able to explain why Barba was released after initially being detained. The reporter insists on characterizing [Barba] as an informant but more importantly, she is drawing a straight line between his release in our district and his ability to have orchestrated these straw purchases. Search our files, the DEA files but find out what the reason was. Obviously, Barba should be under the Courthouse now, but if we thought he was going to do something for us at the time, then we should say so, or at a minimum, explain the background to DOJ. Or was he going to be released because of some changed circumstance which we could not counter or resist? I would like to know today.
Thanks.

¹¹⁰ See http://www.brownsvilleherald.com/news/valley/article_8c418b30-18f3-5f2a-9c54-186f40c173fe.html (accessed September 20, 2016).

Davis immediately reached out to Wolfe for assistance, who in turn, asked his legal assistant to retrieve Barba's case file. Wolfe also e-mailed RAC Templeton, stating, "This matter is still boiling[.] I need to sit down with you and [Agent Wyshak] and to call [Agent Flagge] to see if I can answer these questions for Bales." However, Wolfe told us that he did not recall having a meeting with this group, and only recalled searching his e-mail, retrieving the Barba case file, and then physically placing the file on Davis's desk. Wolfe said he did not recall actually reviewing the case file at that time. Wolfe also told us that he was not aware of anyone searching the DEA's case file on Barba in response to the questions posed by Bales. On the subject of Barba's detention, Wolfe said that he told Davis the government withdrew its detention motion because the DEA wanted to use Barba as an informant.

According to Davis, the Barba case file did not contain much information and it appeared to have been "scrubbed" per standard U.S. Attorney's Office procedures.¹¹¹ He also told us, "[I]f I had had an inkling about a statement made about 20 AK-47s, I would have gone to DEA for that[.] [J]ust because the case has been scrubbed doesn't mean that that sort of information is not available [elsewhere]."

In the early evening of February 13, Davis e-mailed Bales a memorandum that contained a chronology of events in Barba's narcotics and firearms cases. Davis copied the Executive Assistant U.S. Attorney, the Criminal Chief, and Wolfe on the e-mail. According to the e-mail, the chronology was based upon a review of the U.S. Attorney's Office's case file, conversations with Wolfe and Ballard, and a review of the docket sheets in both cases. The chronology identified the key dates in Barba's narcotics case, including Wolfe's several attempts to schedule a proffer with Barba. However, other than mentioning Barba's interest in cooperating against his narcotics suppliers as of July 1, 2010, the chronology did not describe any efforts by the U.S. Attorney's Office or DEA to secure a cooperation agreement with Barba.

Upon reviewing the chronology during his OIG interview, Davis said, "I don't think I answered very well the essential question of why [Barba] was released after initially being detained." Davis said he did not believe he would have overlooked a directive from Bales, but could not recall whether he

¹¹¹ According to Bales and Davis, it is the practice of the U.S. Attorney's Offices to "scrub" case jackets of certain materials, including grand jury and law enforcement sensitive information, once the case has been closed. According to the U.S. Attorney's Manual, records and files:

should be maintained in current and orderly manner, and shall be disposed of in accordance with the General Records Schedules issued by the National Archives and Records Administration (NARA), or the retention schedules approved specifically for [the Executive Office for U.S. Attorneys] and [U.S. Attorney's Office]s by the Archivist of the United States []. Non-record materials, e.g., extra copies of correspondence and duplicate copies of records, may be destroyed without disposition authority.

USAM 3-13.300. We did not examine the U.S. Attorney's Office's compliance with applicable records retention and destruction policies as part of this review.

reviewed the DEA-6s for the Barba investigation in preparation for drafting the chronology. Davis said he recalled speaking to Templeton about Barba's detention and was told that DEA did not ask Wolfe to seek Barba's release from detention. He recalled that Wolfe, on the other hand, told him that DEA "wanted to work" Barba and thought "they could do big things with him."

Bales told the OIG that Davis's chronology is "the best record of what I was told" about Barba, and that it was his understanding that Barba was released from detention in order to further cooperate with DEA. Bales also told us that he discussed with the recipients of his e-mail about why it took so long to proffer Barba, and was told that Barba's attorney failed to show up to scheduled meetings. According to Bales, even putting aside the information about the firearms, the typical practice at the U.S. Attorney's Office is to debrief or proffer a defendant in custody before considering release. Bales said he was "surprised that we released [Barba] without having had that comprehensive briefing . . . [t]o understand whether or not [Barba] could even do anything for us." He called the handling of the Barba case "a very odd progression" and stated, "I think it indicates that [Wolfe] is not paying close attention to the case, that he has other things that are more interesting and are taking more of his attention. And . . . we are dropping the ball. We did drop the ball."

On February 14, 2012, Agent Flagge e-mailed his current supervisor in Baton Rouge and RAC Templeton about his involvement with Barba's narcotics case. Flagge wrote, in part:

I had no involvement with BARBA'S further cooperation after his initial arrest. I don't recall having any detailed conversations with anyone from Beaumont [U.S. Attorney's Office] about BARBA'S ability to cooperate, [whether] to provide historical information, or take a proactive role, in the Beaumont DEA drug investigation. To my knowledge, BARBA was represented by an attorney shortly after his arrest. At the time of my transfer [to DEA's Baton Rouge Resident Office], I understood that BARBA's cooperation was undecided.

In response, RAC Templeton wrote, "[I am] trying to determine if you or other DEA personnel requested [Barba's] release. If we did, I would like to let the [U.S. Attorney] and AUSA know about it." The OIG did not find any written responses to Templeton's e-mail; however, according to Templeton, Flagge and TFA Davenport told him that they did not request that Barba be released from custody.

Shortly after learning about the circumstances surrounding Barba's narcotics case, Bales instructed his Criminal Chief and other supervisors at the U.S. Attorney's Office to draft a new policy requiring supervisory approval for the use of cooperating defendants. Bales told the OIG that "my job is to make sure that we are performing and representing the United States in the best manner possible. . . . [I]f there was a mistake going to be made, it was going

to be made at a higher level of experience and responsibility in terms of using somebody like Barba ever again."

The new policy, made effective on April 15, 2013, generally discourages the release of defendants for the purpose of providing cooperation while on pretrial release or pending sentencing. Under the policy, the use of a defendant as a cooperator requires a written request from the law enforcement agency that includes details of the proposed cooperation; a written pretrial cooperation agreement signed by the defendant, defense counsel, the prosecutor, and the monitoring law enforcement agent; at least monthly consultation between the prosecutor and the monitoring agent about the progress of the cooperation; and at least a bi-monthly status memorandum from the prosecutor to the approving official in the U.S. Attorney's Office. In addition, under circumstances where there is a legal presumption that a defendant should be detained pending trial, see 18 U.S.C. §§ 3142(e)(2), (e)(3), and (f)(1), a prosecutor must obtain written permission from the Attorney-in-Charge, Criminal Chief, First Assistant U.S. Attorney, Executive Assistant U.S. Attorney, or the U.S. Attorney to use a cooperating defendant. The policy also governs the detention and use of cooperating defendants after conviction and the use of third-party cooperators.

IV. Headquarters' Knowledge of Barba and Riendfliesh

We did not find any evidence that DOJ, ATF, DEA, or FBI Headquarters were informed or knew of Barba or Riendfliesh prior to the Riendfliesh Firearm being traced from the Zapata/Avila crime scene. After the trace revealed the connection between that incident and ATF firearms investigations, ATF Headquarters requested reports and briefings on both the Baytown Crew and Katy Arms cases. On Sunday, March 6, 2011, Agents Specter and Smith briefed senior ATF officials, including then-Acting Director Kenneth Melson, at ATF Headquarters in Washington, D.C., on the two investigations.

V. OIG Analysis

In this section, we analyze DEA's and ATF's separate, but concurrent investigations of Barba in 2010. We first examine DEA's narcotics investigation in the Eastern District of Texas and how agents responded to information they obtained about Barba's potential firearms trafficking activities. We also examine how that response and the handling of the information affected decisions made by the U.S. Attorney's Office regarding Barba's detention following his arrest and indictment, and how those decisions impacted Barba's ability to traffic a firearm that was used in the shooting involving Agents Zapata and Avila on February 15, 2011. We then separately examine ATF's firearms trafficking investigations in the Southern District of Texas involving Barba and whether they were conducted in a manner that unreasonably delayed ATF's discovery of Barba and Riendfliesh.

In sum, we concluded that DEA failed in its responsibility to inform the U.S. Attorney's Office at the time of Barba's arrest that he was recorded

discussing a potential firearms trafficking operation, and that DEA did not adequately assess the risk to public safety that Barba's possible firearms trafficking activities created. While Barba was not arrested on narcotics charges until 3 weeks after the May 26 meeting with the confidential source where he made the statements about a deal for 20 AK-47s, the information about this trafficking should have been pursued promptly by DEA – by, for example, referring the information promptly to ATF for investigation and, at least, attempting to question Barba about the firearms at the time of his arrest. DEA also should have highlighted Barba's statements for the AUSA responsible for prosecuting Barba for his narcotics activities so that the U.S. Attorney's Office could have considered whether to seek his arrest earlier, and then whether to seek his continued detention after he ultimately was arrested. This failure, together with the AUSA's independent failure to fully and timely review the DEA investigative reports, resulted in a poorly-informed decision not to seek Barba's detention following his indictment. While that ill-considered release was delayed when the AUSA was called away on other business, this eventually resulted in Barba being released from custody and enabled him to continue his firearms trafficking activity during an extended period where he was neither proffered nor actively used in cooperation or apparently monitored by DEA. Based on the information reasonably knowable to the agents and the prosecutors, it is clear that they should not have agreed to Barba's release from federal custody and left at liberty to direct the straw purchase of the Riendfliesh Firearm and its trafficking to Mexico, where it was used in the Zapata/Avila shooting.

With respect to the conduct of firearms trafficking investigations that led to ATF's identification and arrests of Barba and Riendfliesh, our conclusions were mixed. We found that ATF agents diligently pursued leads and took effective investigative steps as the Katy Arms and Baytown Crew cases progressed, and appropriately consulted and coordinated their activities with the U.S. Attorney's Office for the Southern District of Texas. We did not identify any actions that agents responsible for these investigations failed to take that might reasonably have had the effect of preventing the trafficking of the Riendfliesh Firearm. With respect to the investigation of Franklin, we considered whether an earlier interview of her might have brought Barba to the attention of ATF agents earlier, thereby potentially preventing Riendfliesh's firearms purchase. We found it difficult to evaluate the case agent's explanations for the time it took to conduct an interview of Franklin because of the lack of contemporaneous records in the investigative file and the agent's inability to recall details of the case. However, we concluded that in light of the multiple investigative steps that would have had to occur in a relatively short period of time, and the inability to know how Barba would have responded to earlier inquiries by ATF agents, it would be unreasonably speculative to conclude that interviewing Franklin earlier would have prevented the trafficking of the Riendfliesh Firearm.

We reached the same conclusion about whether ATF could have acted to halt the transfer of the Riendfliesh Firearm, even if DEA had furnished ATF earlier with information about Barba's firearms trafficking activities as it clearly should have done. As with the Franklin interview, we found that too many

contingencies were involved in preventing the trafficking of the Riendfliesh Firearm.

A. The DEA Narcotics Investigation of Barba

As described in this Chapter, during a DEA undercover narcotics operation on May 26, 2010, Barba told a confidential source that he was involved in a firearms deal involving 20 AK-47s, that he was on probation, and that if he were arrested, he would be facing 15 years in prison. DEA Special Agent Tony Ryan Flagge, the co-case agent for Barba's narcotics investigation in the Eastern District of Texas, learned of Barba's comments from debriefing the source immediately following the undercover operation and from the audio recording of the source's meeting with Barba. Flagge memorialized Barba's comments in a DEA-6, a form that DEA uses to record investigative activity, on the same day as the undercover operation. We found that Barba's statements to the source about his possible firearms dealing were a lead and that an investigation of his statements should have ensued promptly; DEA either should have alerted ATF in a timely manner or promptly pursued the lead itself, and notified a prosecutor. DEA did not take these actions. Barba's statements to the source were never investigated, and DEA failed to highlight for the AUSA assigned to prosecute Barba his possible involvement in firearms trafficking, which contributed to the circumstances that ultimately resulted in Barba's release from custody in July 2010. Within 1 month of being released, at Barba's behest and at the request of one of his straw purchasers – Blandon Shaffer – Riendfliesh purchased the firearm that was used in the attack on Agents Zapata and Avila. We found that DEA's response to the information contained in the DEA-6 was insufficient and reflected an inadequate assessment of the public risk created by Barba's activities – a conclusion reinforced by the fact that Barba's statements about his participation in a firearms deal involving AK-47s coincided with Shaffer's purchase of 10 AK-47s on May 26, 2010.

1. Handling of Information About Barba's Potential Firearms Trafficking

The U.S. Attorney for the Eastern District of Texas, John Bales, told us that Barba's statements concerning the AK-47's "should have been the biggest thing [the DEA agents] talked about" on May 26, 2010, and that "it's very upsetting to read [Paragraph 9 of the DEA-6] now and understand what happened later." Bales told us it was "obvious" that Barba's statements were a lead that should have been pursued. We agree.

In contrast, Flagge told us that he was not alarmed by Barba's statements about the firearms because the deal Barba described could not be corroborated and was a form of puffery to impress the confidential source. Accordingly, Flagge did not believe this information was a credible lead and took no immediate action on it, telling us that his strategy in the case was to exploit the information in an interview of Barba after he was arrested and cooperating. His supervisor, RAC Templeton, who reviewed the DEA-6 after Flagge submitted it,

told us that he was concerned about Barba's statements and that this was a consideration in the decision to conduct a "buy-bust" operation and arrest Barba about 3 weeks after the May 26 operation.

However, the interest or concern that Flagge and particularly Templeton told us they had regarding Barba's possible firearms trafficking was not reflected in their actions. We found that even after Barba was arrested and was cooperating with DEA – at least for 1 night – Flagge did not question Barba about his statements concerning firearms dealing. Further, Flagge told us that he never discussed Barba's prior statements regarding firearms with anyone – such as with his supervisor, his co-case agent, or the assigned AUSA – and thereby eliminated any opportunity to get different perspectives about the significance of the information or how it should be addressed. We also found no evidence that Flagge briefed his successor, Agent Wyshak, about Barba's link to firearms trafficking and his case strategy for addressing it, or did anything to ensure the firearms information was investigated by any DEA agent or referred to ATF or other authorities when he was transferred to DEA's Baton Rouge Resident Office in August 2010.¹¹²

For his part, Templeton did not take steps to ensure that the U.S. Attorney's Office for the Eastern District of Texas was made aware of Barba's statements. Further, although Templeton told us that he believed that Flagge or another DEA agent passed Barba's firearms reference to ATF, or possibly the Baytown Police Department, we did not find any basis for this belief or any evidence that it, in fact, occurred. To the contrary, both Flagge and TFA Davenport told us that they never discussed the information about Barba's firearms deal with any other law enforcement agency or even AUSA Wolfe, who was prosecuting Barba's narcotics case.

We found that neither Flagge nor Templeton sufficiently accounted for several considerations when assessing the potential risks that Barba posed to the public, such as the preference of drug cartels for the same type of firearm that Barba said he was trafficking, the significance of both drugs and firearms in an investigation, and the volume of firearms flowing over the border to the drug cartels from Texas and the Department's focus on stopping firearms trafficking across the Southwest Border. We believe that Barba's comment about an arms deal involving 20 AK-47s, by itself and particularly in light of these factors, should have caused the agents to view Barba's statements as an important lead that needed prompt attention, including coordination with other agencies and follow-up at the time of his arrest and during the legal proceedings that followed.

When we asked U.S. Attorney Bales whether DEA's arrest of Barba 3 weeks after he made the statements about the 20 AK-47s was a sufficient

¹¹² Because Agent Wyshak declined our request for an interview, we do not know if she read the DEA-6 that memorialized the May 26, 2010 undercover operation or discussed Barba's firearms statement with anyone.

response, he stated that he would be disappointed if that was DEA's position, and that "it's antithetical to what I know many DEA agents think and the way they perform." Again, we agree with Bales' assessment. We received no cogent explanation for why DEA did not promptly contact ATF's Beaumont Resident Office, DEA's counterpart in the region and the agency with expertise in handling firearms investigations, with the information as soon as DEA learned of it, especially in light of the quantity and type of firearm that Barba mentioned, and we do not believe there was any excuse for DEA's failure to do so. As our review discovered, straw purchaser Blandon Shaffer made his first purchase (10 AK-47s) on behalf of Barba on May 26, 2010, the same day that Barba mentioned his deal for AK-47s to DEA's confidential source. ATF only learned of this sale months later through its Katy Arms investigation. The lead agent on ATF's investigation of the Baytown Crew told us that if DEA had shared its information about Barba in May 2010, it would have benefitted ATF's investigation as ATF would not have had to wait to learn of Barba through the activities of his straw purchasers months later. Similarly, DEA should have had discussions with the U.S. Attorney's Office about the potential danger that Barba posed. As we mentioned above, however, even after Barba agreed to cooperate immediately following his arrest DEA did not seek to question him about his firearms dealings and then it compounded this by agreeing to his release from custody.

Our conclusion that the information about Barba's firearms deal should have been shared in a timely manner with ATF and the prosecutor is reinforced by applicable DEA policy. According to DEA's policy on Debriefing of Confidential Sources, if DEA receives information during the debriefing of a confidential source that concerns a "serious criminal offense (*e.g.*, a felony)," then action should be taken "to coordinate with supervisory personnel of the responsible law enforcement agency, and/or with federal or state prosecutor." Moreover, the policy requires that such a debriefing occur whenever a source participates in an undercover meeting or other operational activity, and specifies that the agent has a duty to "thoroughly question [the source] regarding all aspects of his/her knowledge of nondrug related criminal activities."

We were not persuaded by Flagge's position that DEA's debriefing policy did not apply to Barba's statements to the source about his firearms deal, or by Flagge's alternative position that Barba's statements were not specific or credible and therefore did not require coordination with the "responsible law enforcement agency."¹¹³ We were similarly unpersuaded by Templeton's suggestion that the policy's applicability hinges on whether Flagge learned about

¹¹³ Flagge also claimed that he performed his due diligence on Barba by checking DEA databases for connections to other drug cases, and that DEA intended to arrest Barba soon after the May 26 meeting with the source. However, it does not appear either of these steps was intended to account for the information about Barba's potential firearms trafficking. Indeed, when DEA arrested Barba, he was not asked any questions about firearms, and DEA did not inform the prosecutor about Barba's statements about the firearms deal for 20 AK-47s -- information that if known by the prosecutor likely would have caused the government to seek Barba's detention.

Barba's statements from debriefing the source or from listening to the recorded conversation between Barba and the source (in any event, Flagge told us that he probably learned about the statements through both avenues but could not specifically recall). We believe Flagge should have obtained information about the 20 AK-47s from debriefing the source even if he first learned of the firearms transfer from listening to a tape of Barba's conversation with the source. In short, he cannot avoid the policy's applicability by violating it. In our view, the analysis is straightforward: Flagge debriefed the source following the source's participation in an undercover meeting that included statements from a drug dealer about a transaction for 20 AK-47s; that transaction constituted a "serious federal offense;" and Flagge had a duty to "thoroughly question" the source about the source's knowledge of Barba's nondrug related criminal activities, to include the transaction in question. Under these circumstances, we believe DEA's debriefing policy applied and that the coordination provision was triggered.¹¹⁴

While we believe this is the proper application of DEA's policy to these facts, the testimony we received from Flagge and Templeton about the policy's scope and applicability, though unpersuasive, indicated to us that the policy could be made more explicit and comprehensive. This is an issue we highlighted in our recent report concerning implementation of recommendations contained in our report on ATF's Operations Fast and Furious and Wide Receiver.¹¹⁵ We found no policies or guidance from DEA Headquarters that expressly described when DEA agents should provide ATF with firearms-related leads. During that review, DEA staff informed us that it was their practice to confer with ATF on matters involving firearms transfers because firearms are within ATF's jurisdiction. Flagge told us that he is not aware of any policy governing when DEA agents should contact ATF, but instead uses his "common sense" to determine if DEA has "credible information" to pass along, and both Flagge and Templeton provided interpretations of DEA's confidential source debriefing policy that disfavored information sharing. We believe the DEA's handling of Barba's statements about a deal for 20 AK-47s both illustrates and reaffirms the importance of our recommendation that DEA establish a policy that identifies for agents when they should contact ATF about firearms transfers.

¹¹⁴ Templeton told us that he recalled that he and his agents separately talked to the Baytown Police Department about the situation with Barba, but he could not specifically recall whether the subject of firearms was discussed, though he believed it was. Flagge told us that he did not contact any law enforcement agency about Barba's statements, and Davenport told us that he did not learn of Barba's statements until after the Zapata/Avila shooting.

¹¹⁵ The OIG's report, *A Review of the Department of Justice's and ATF's Implementation of Recommendations Contained in the OIG's Report on Operations Fast and Furious and Wide Receiver* (February 2016), can be found at <https://oig.justice.gov/reports/2016/o1601.pdf#page=1> (accessed December 14, 2016).

2. Decision to Not Seek Barba's Detention

The staff of the U.S. Attorney's Office for the Eastern District of Texas, including the AUSA assigned to prosecute Barba, Jeff Wolfe, told the OIG that they did not know of the information in Paragraph 9 of the DEA-6 until the OIG's interview of them, long after the investigation and prosecution of Barba for his narcotics and firearms offenses. As discussed above, we believe that DEA should have informed Wolfe about this information and that Wolfe himself, with the exercise of due diligence, should have ensured that he was aware of all relevant information regarding Barba prior to agreeing to his release from custody in July 2010.

Wolfe told the OIG that he had no recollection either of reading the information memorialized in Paragraph 9 of the DEA-6 or of learning of that information, though he does not doubt that he received the investigative report in question. We did not find evidence that DEA alerted Wolfe or other staff in the U.S. Attorney's Office to Barba's statements – a situation that U.S. Attorney Bales described to us as "mortifying". However, it appears that Flagge provided Wolfe with the DEA-6 forms for the Barba case and the audio and video recordings from the May 26, 2010 undercover narcotics operation by at least July 26, 2010, when Barba was arraigned and Wolfe provided discovery to defense counsel. Thus, Wolfe made uninformed strategic decisions in Barba's narcotics prosecution, specifically involving Barba's detention and possible cooperation, without knowing about the information about Barba's deal for 20 AK-47s, and agreed to his release for speculative future cooperation that took months to progress and never showed any results.

Although witnesses told us that AUSAs in the Eastern District of Texas had significant discretion in 2010 when making recommendations to the court concerning detention decisions, we found that the U.S. Attorney's Office's standard practice at that time would have been to seek to detain Barba – an individual on felony probation for trafficking narcotics – irrespective of any evidence that he may also have been trafficking firearms. Despite this standard practice, Wolfe decided that the government would not seek Barba's detention at the initial hearing, as is evidenced in e-mails to the U.S. District Court and his colleagues on June 18, 2010. At the time Wolfe made this decision, he only had Flagge's affidavit in support of a complaint, but no other DEA paperwork or evidence in the case upon which to rely. Flagge did not include Barba's firearms reference in his affidavit. Also at this time, Wolfe was focused on complex drug trafficking cases involving multiple defendants and wiretaps.

On June 21, 2010, a supervisor at the U.S. Attorney's Office in Beaumont handled Barba's initial court appearance for Wolfe, who was traveling on other work, at which point the government moved for Barba's detention. Wolfe told us that he did not know why the government moved for Barba's detention at the initial hearing, which had not been Wolfe's intent, though this may just have been a matter of standard practice in his absence. Following his indictment, Barba was arraigned on July 26, and the government – represented by Wolfe –

withdrew its motion for Barba's detention. Wolfe told us that he withdrew the motion because he believed that Barba would proffer and then provide proactive, substantial assistance in DEA investigations of higher-level narcotics suppliers.

Although RAC Templeton told the OIG that DEA does not weigh in on detention decisions, we found that Flagge urged Wolfe to seek Barba's release from detention so that Barba could cooperate with DEA. We determined that Wolfe relied on Flagge's request without thoroughly examining all the available facts in the case. We believe that Barba's reference to firearms trafficking during the May 26, 2010 undercover narcotics operation should have factored into the government's decision as to whether to seek Barba's detention in his narcotics case. As Wolfe himself admitted, if he had known about the facts memorialized in Paragraph 9 of the DEA-6, he would not have agreed to Barba's release.¹¹⁶

Our review revealed that the Baytown Crew straw purchasers did not buy firearms on behalf of Barba while he was incarcerated in his narcotics case during June and July 2010. We cannot say with certainty that the Baytown Crew's firearms trafficking would have ceased if Barba had remained incarcerated; however, we believe that but for the omissions of the DEA and Wolfe in the handling of the narcotics case, it is highly unlikely that Barba would have been left at liberty to traffic the Riendfliesh Firearm, which later would be used in the shootout involving Agents Zapata and Avila.

We also believe that Barba's reference to firearms trafficking should have weighed into the government's decision whether to allow Barba to proffer and provide proactive, substantial assistance to the DEA. As described above, Wolfe told us that he did not know about Barba's firearms statement during the May 26, 2010 undercover narcotics operation until years after Barba's narcotics case was closed. As Wolfe told us, he would have at least considered handling Barba's narcotics case differently if he had known about information pertaining to the deal for 20 AK-47s.¹¹⁷

¹¹⁶ After Wolfe learned that Barba had a firearms case in the Southern District of Texas, he did not reconsider Barba's release conditions in the narcotics case. He told us that no one from ATF or the U.S. Attorney's Office for the Southern District of Texas requested that he seek Barba's detention or take any other action. In fact, as we described earlier, AUSA Ballard asked Wolfe not to ask any "pointed questions" about firearms during the anticipated proffer relating to the narcotics case. Wolfe told us that under these circumstances it would not have been reasonable for him to request that the court reconsider Barba's release status on his own initiative because doing so would have required him to present evidence related to the pending firearms investigation in the Southern District of Texas.

¹¹⁷ For example, Wolfe remarked, "if the person is selling guns in conjunction with drugs, then that's a potential [18 U.S.C. § 924(c)], and those are things that I'm very sensitive to," referring to the criminal statute prohibiting the use or possession of a firearm during a drug trafficking crime. A violation of Section 924(c) carries substantial penalties, including a lengthy mandatory period of incarceration.

Additionally, we believe that the government should have followed the standard practice in the Eastern District of Texas, which according to U.S. Attorney Bales was to not withdraw its motion for Barba's detention without first securing a proffer from him *while he was detained*. Wolfe told the OIG that it was his responsibility to arrange for Barba's proffer, and then DEA would arrange for any proactive, substantial assistance with Barba. As described earlier in this Chapter, after Barba was released from detention, Wolfe repeatedly attempted to complete Barba's proffer, but did not succeed until February 7, 2011, which was more than a half year after Barba was released from custody and over 3 months after he entered a guilty plea in the case. Bales told us that he found it "an odd thing" that Barba was allowed to remain free following his guilty plea.¹¹⁸ Nor did Barba ever provide DEA with any proactive, substantial assistance or useful information after his release from custody. Under these circumstances we believe that Wolfe should have sought detention, as his release and eventual proffer did not further any other DEA narcotics investigations or support his continued release, a situation significantly exacerbated by his dangerous firearms activities.

Wolfe told the OIG that had he known about the information in Paragraph 9 of the DEA-6 immediately following the May 26, 2010 undercover operation, he would have shared that information with his supervisor, and he would have told AUSA Ballard when she first contacted him about Barba's firearms case out of the Southern District of Texas in September 2010. Ballard, like many other witnesses that the OIG interviewed, told us that she did not learn of the contents of Paragraph 9 until an OIG interview with her. Ballard further told us that if she had known about Paragraph 9 it may have changed her view as to whether ATF should participate in DEA's proffer of Barba.

B. The ATF Firearms Trafficking Investigation of Barba

We also examined ATF's firearms trafficking investigations in the Southern District of Texas involving Barba and whether they were conducted in a manner that unreasonably delayed ATF's discovery of Barba and Riendfliesh. Our findings were mixed. We found that ATF agents diligently pursued leads and took effective investigative steps as the Katy Arms and Baytown Crew cases progressed, and appropriately consulted and coordinated their activities with the U.S. Attorney's Office. We did not identify any actions that agents responsible for these investigations failed to take that might reasonably have had the effect of preventing the straw purchase and trafficking of the Riendfliesh Firearm.

Also, we found no instances where agents received advance notice of purchases by any of the subjects under investigation, or instances where agents observed purchases or transfers of firearms by any of the subjects. Thus, unlike

¹¹⁸ 18 U.S.C. § 3143(a) provides that a person found guilty of an offense and awaiting imposition of a sentence that includes a term of imprisonment under the sentencing guidelines shall be detained unless the court determines by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person in the community.

in our review of Operation Fast and Furious, we did not have to assess whether ATF agents unreasonably delayed interviews or arrests of subjects as their purchasing activities continued, or whether agents did not seize firearms despite having the legal authority and opportunity to do so. In addition, we did not find evidence that the indictment or subsequent arrests of the subjects of the investigation were unreasonably delayed.

The interviews of Franklin the last week of August 2010 contributed significant leads to the investigation of Barba. During her first interview, Franklin identified Barba as the individual for whom she purchased firearms. During a second interview 3 days later, she identified two individuals who participated in the purchases with her. One of these associates – Shaffer – was the individual ATF agents in Beaumont, Texas were gathering information about at the end of September 2010 when they learned from an FFL that Riendfliesh had made firearms purchases similar to Shaffer's on August 20. Thus, the Franklin interview factored significantly into the identification of the individuals – Barba and Riendfliesh – who were responsible for the purchase of the Riendfliesh Firearm. In light of the time it took ATF agents to interview Franklin after she was first identified by an FFL on June 7, 2010 as making a suspicious purchase, we considered whether a more timely interview of Franklin might have hastened the identification of Riendfliesh or accelerated the investigation of Barba in such a way that Riendfliesh's August 20, 2010 purchase might not have occurred. While we identified some concerns with the initial case agent's handling of the Franklin investigation, we could not conclude that an earlier interview of Franklin would have prevented Riendfliesh's August 20, 2010 purchase.¹¹⁹

During the first couple of weeks after receiving the tip from the FFL about Franklin's suspicious purchase, the case agent took some reasonable preliminary investigative steps to assess the strength of the lead. Then the agent, at the direction of his supervisor, shifted his attention to support some other cases in the office, most significantly the Katy Arms investigation. While this shift did not preclude the agent from continuing to do some work on the Franklin investigation, we did not find it unreasonable that the case agent focused his energies on what was at that time a significant investigation for the office, and we therefore did not fault him for not also moving forward at that time with an interview of Franklin.

The first interview of Franklin was on August 23, 2010. We believe that the case agent likely could have found the time to interview Franklin before this

¹¹⁹ We also considered whether a timelier interview of Sanchez might have prevented the Riendfliesh purchase. However, unlike Franklin, Sanchez did not identify Barba as the individual for whom he purchased firearms when he was interviewed by ATF agents. In fact, Sanchez told the agents that he purchased the firearms for personal use and eventually sold them to unknown men to pay for his child support. We believe it is reasonable to assume Sanchez would have provided a similar explanation at an earlier interview, and on that basis concluded that a timelier interview of Sanchez was unlikely to have prevented the Riendfliesh purchase.

date, though the lack of documentation and his poor recollection about what specifically he spent his time on made it difficult for us to assess just how much earlier. However, even if an interview had been conducted significantly earlier, perhaps in July 2010, we cannot know whether the resulting investigation into Barba's or Shaffer's activities would have prevented the trafficking of the Riendfliesh Firearm. Franklin identified Barba during her first interview, but we cannot know the manner in which or how quickly the case agent would have pursued that lead, especially given the time he was spending on the Katy Arms case. Moreover, even if the case agent had pursued the lead by interviewing Barba before August 20, 2010 – the date of Riendfliesh's purchase – it cannot be known how Barba would have responded or whether he would have curtailed his firearms trafficking activities after the contact with law enforcement. In fact, to the extent there is a basis to speculate, the record suggests that an interview of Barba might not have affected whatever sequence of events led to Riendfliesh's firearms purchase. Indeed, Barba continued to engage in firearms trafficking activities while he was under indictment for drug charges, and when he became aware that ATF agents might question his associates, he told them to lie. This brazen response to law enforcement suggests that an interview of Barba before August 20 about Franklin's purchases might not have curtailed his efforts to secure additional firearms, efforts that included using Shaffer – and through Shaffer, Riendfliesh – as a straw purchaser in August.¹²⁰

For these reasons, we concluded it would be unreasonably speculative to find that interviewing Franklin earlier would have prevented the trafficking of the Riendfliesh Firearm. We also concluded that while the case agent may have had time to interview Franklin earlier than he did, we could not find under the circumstances that the delay was unreasonable. We did, however, identify other problems with the case agent's handling of the investigation – namely, his failure to document investigative steps that he told us he took, such as his contact with the FFL and attempted surveillance of Franklin. The absence of contemporaneous documentation in the investigative file created significant challenges for us to corroborate the case agent's testimony and evaluate the reasonableness of the case agent's conduct.

¹²⁰ We also considered whether an earlier interview of Franklin might have led to an earlier identification of Shaffer, the individual whose activities eventually led to the identification of Riendfliesh. We concluded this would have been highly unlikely. As described in this Chapter, Franklin did not identify Shaffer as an associate until her second interview. The case agent conducted the second interview only after agents processing evidence in the Katy Arms case discovered in late August 2010 that Franklin had purchased firearms from Katy Arms. The Franklin case agent was notified of this connection on August 25, 2010 – 5 days after the Riendfliesh purchase. Given this sequence of events, we cannot conclude that an earlier interview of Franklin might have elicited information that the case agent's actual first interview of Franklin did not.

CHAPTER FIVE: CONCLUSION

On February 15, 2011, members of the Los Zetas drug cartel attacked Immigration and Customs Enforcement (ICE) Agents Victor Avila and Jaime Zapata on a highway approximately 200 miles North of Mexico City, killing Agent Zapata and seriously injuring Agent Avila. Traces of two firearms used in the assault revealed that Otilio Osorio purchased one of the weapons at the Dallas-Fort Worth Gun Show on October 10, 2010 (Osorio Firearm), and that Robert Riendfliesh purchased the other at a pawnshop in Beaumont, Texas on August 20, 2010 (Riendfliesh Firearm). Osorio and Riendfliesh were arrested along with Osorio's brother, Ranferi, and a neighbor, Kelvin Morrison, shortly after ATF completed traces of the firearms on February 25, 2011. Our review examined the information that the ATF, DEA, FBI, and DOJ obtained about the Osorios, Morrison, and Riendfliesh prior to the Zetas attack on the ICE agents, and whether agents failed to seize firearms destined for Mexico. We also examined the circumstances surrounding the release of Manuel Barba from federal custody in Beaumont, Texas in July 2010 following his arrest for narcotics offenses. Barba led a ring of firearms "straw purchasers" – the "Baytown Crew" – and trafficked the Riendfliesh Firearm to Mexico following his release. Our conclusions are highly critical of performance failures of a DEA line agent and an AUSA in Beaumont regarding their handling of Barba, and of an ATF group supervisor in Dallas regarding the Osorios and Morrison.

With respect to the Osorios and Morrison, our review found that ATF's Dallas Field Division had collected sufficient facts prior to Otilio Osorio's purchase of the Osorio Firearm to justify questioning Ranferi Osorio and Morrison or taking other investigative steps within a reasonable amount of time about their firearms purchases. According to the Criminal Chief at the U.S. Attorney's Office for the Northern District of Texas, by early October 2010 there was probable cause to believe that Ranferi Osorio and Morrison had committed crimes and that they should have been investigated. However, we do not believe that it is possible to identify what investigative steps should have been taken at the time, or precisely when arrests should have occurred, and that to attempt to do so now would be mere speculation. We concluded that the supervisor of ATF's firearms group was not sufficiently proactive and failed to ensure that the leads that ATF had received about Ranferi Osorio and Morrison were investigated and that consultations with prosecutors had started. We further determined that ATF delayed its investigations of the Osorios and Morrison and their arrests for reasons that lacked sufficient justification. Consistent with the views of the Criminal Chief of the U.S. Attorney's Office, we believe that there was adequate probable cause to arrest both Osorio brothers and Morrison following the Osorio's transfer of 40 firearms [REDACTED] on November 9, 2010. ATF's first contact with the Osorios and Morrison did not occur until late February 2011; however, 5 months following warnings from an ATF intelligence analyst about Ranferi Osorio and Morrison and ATF's receipt of the traces of firearms seized at a crime scene. We rejected multiple

explanations that ATF provided for these delays, including that ATF was waiting on guidance from DEA.

Our review also found serious deficiencies with DEA's and an AUSA's handling of the Manuel Barba case. We determined that the AUSA should not have agreed to Barba's release from federal custody following his indictment and ultimate plea to drug charges in the Eastern District of Texas, leaving him free to lead the Baytown Crew and ultimately to direct the straw purchase and the trafficking of the Riendfliesh Firearm to Mexico. We found that prior to his release, the lead DEA agent who was investigating Barba wrongly dismissed statements about trafficking AK-47s as lacking credibility and failed to highlight them for the AUSA or his supervisor. We found no evidence that the assigned AUSA in Beaumont read the DEA report that recited Barba's statements or take them into account in agreeing to his release. The DEA agent, his supervisor, and the AUSA also failed to alert ATF about them so that they could determine what investigation was appropriate.

As a result, and following the DEA agent's request to use Barba as an informant, the AUSA withdrew the government's opposition to Barba's release, also without informing the court about Barba's statements. Following his release, Barba's proffer was delayed for months and, while at liberty, he arranged for multiple "straw purchasers" to buy firearms that he sent to Mexico, including the Riendfliesh Firearm. While we were not persuaded by the explanations advanced by the DEA agent and his supervisor for not passing on evidence of Barba's involvement with firearms trafficking to ATF, we determined that there is room for improvement in DEA's policy to clearly require such communication in appropriate circumstances.

All these errors had significant consequences. The firearms trafficking activities of the Osorios and Morrison went unabated until their arrests in February 2011, and the government missed an opportunity to curtail Barba's crimes. Our review also examined whether ATF agents failed to seize firearms in circumstances where they had both the legal authority and opportunity to take them. We did not identify instances where agents witnessed the unlawful transfer of firearms and failed to seize them. We determined that ATF agents learned of the firearms purchases by the Osorios, Morrison, Riendfliesh, and Barba after they occurred and agents therefore were not in a position to seize their firearms as they took custody of them. We identified one instance, however, where we believe ATF agents lawfully could have seized 10 firearms in the Osorios' possession but failed to do so. We determined that the cause of this oversight was a lack of communication between agents and with the U.S. Attorney's Office. By the time agents arrested the Osorios, 5 of the 10 firearms were gone, and 2 of those were later recovered at a crime scene in Mexico.

Lastly, our review did not find evidence that the FBI, ATF Headquarters, or DOJ were alerted to or aware of the criminal activities of the Osorios, Morrison, Riendfliesh, or Barba before the Zapata/Avila shooting.

We have opted not to make recommendations for improvement in this report, as we believe that the recommendations contained in our report on Operation Fast and Furious and in our recent report on the implementation of recommendations from that report are sufficient to address the deficiencies we identified here.¹²¹ As all of these reviews demonstrate, the stakes for law enforcement in these high risk situations are significant, and the possibility of tragic consequences for failure to respond to them appropriately is all too real. We intend to continue to monitor the progress of the Department and its law enforcement components to make every effort to ensure that it takes all possible steps to ameliorate that risk and to ensure that it acts pursuant to appropriate policies to protect the public safety in carrying out its essential mission.

¹²¹ See U.S. Department of Justice Office of the Inspector General, *A Review of ATF's Operation Fast and Furious and Related Matters* (September 2012), and U.S. Department of Justice Office of the Inspector General, *A Review of the Department of Justice's and ATF's Implementation of Recommendations Contained in the OIG's Report on Operations Fast and Furious and Wide Receiver* (February 2016).

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